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No. 97-1808

IN THE

SUPREME COURT of the UNTED STATES

October Term, 1998

MICHAEL BELLESFIELD,
Petitioner

v.

ATTORNEY GENERAL OF THE STATE
OF NEW JERSEY, et.al.

On Petition For Writ Of Certiorari
To The U.S. 3rd Circuit Court of Appeals

PETITION FOR WRIT OF CERTIORARI

MICHAEL BELLESFIELD,
pro-se
P.O. BOX 112
26-15 FOX RUN DRIVE
PLAINSBORO, N.J. 08536
(609) 716-0616

37 pp

SUPREME COURT OF THE UNITED STATES OF AMERICA

QUESTIONS PRESENTED

1. Is abstention appropriate when there exists a confluence of competing doctrines of federalism and family rights, and risks of the erroneous deprivation of "fundamental rights of a Constitutional dimension" in a discrete "suspect category" in contravention of The Child Abuse Prevention and Treatment Act of 1973, 42 USC Section 5101 et seq.?

2. If the District Court, by its abstention in such a case, causes to be left undisturbed a state court decision, which is contrary to the evidence presented and the weight of Federal case law, and many cases and precedents of this Court and long standing Federal and Public policy, thereby creating conflicting precedents, should the Circuit Court reverse such abstention?

3. Should the doctrine of federalism compel the federal courts to defer to state interests, when such interests involve violations of Constitutional safeguards of an equally important private interest and in light of malfeasance and criminal activities by state officials committed under color of state law, amounting to state sponsored kidnapping in order to receive federal funding in violation of 42 USC Section 671 (a) (5)?

LIST OF PARTIES

MICHAEL BELLESFIELD; ERIC BELLESFIELD,
a minor,
plaintiffs,

v.

ATTORNEY GENERAL OF THE STATE OF NEW JERSEY, PETER VERNIERO, in official capacity only;

PETER ALVINO, individually and in official capacity;

NEW JERSEY DEPT. OF HUMAN SERVICES, WILLIAM WALDMAN, DIRECTOR, in official capacity only;

DIVISION OF YOUTH AND FAMILY SERVICES, JAMES VALENTINE, DAVID JOHNSTON, individually and in official capacities;

FAMILY ENRICHMENT PROGRAM; MORRISTOWN FORENSIC ASSOCIATES, MICHAEL SHEA, MICHAEL FIORE, individually and in official capacities;

MORRIS COUNTY PUBLIC DEFENDER'S OFFICE, JOEL HARRIS, individually and in official capacity;

RANDOLPH TWP. SCHOOL SYSTEM, CARMINE GAITO, NORMA MIELE, SUSAN HERSCHMAN, ERIC HERSCHMAN, individually and in official capacities;

MORRIS HILLS SCHOOL SYSTEM, BRADLEY, MR., STORM, MR., individually and in official capacities;

CHILD PLACEMENT REVIEW BOARD, SUZANNE WARREN, individually and in official capacity.

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Ellen v. Florida State Bd of Bar Examiners, (1994 SD Fla.) 859 Supp.1489,6 ADD 40, 8, FLW Fed D 321, 3 AD Cas.908 19

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O'Neil v. City of Philadelphia, 32 F. 3d 785 (3d Cir.1994).....18,23

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PUBLICATIONS/ARTICLES CITED

Transcript: Public Hearing before New Jersey State Senate Committee on Children's Services, 9/27/88,.....Lodging-A

Study Report: New Jersey Legal Services, December, 1994, "Families at Risk: The Need for Foster Care Reform"....Lodging-B

"Using the ADA To Open Gateways", Dept. Of Justice Newsletter at 5,6 (Wash. D.C. May, 1995);.....20

Clark v. Virginia Bd. of Bar Examiners, WL79940 at 6, 7 880 F. Supp 430 (ED Va. 1995).....20

Besharov, D.
"Doing Something About Child Abuse-The Need to Narrow The Grounds For State Intervention", Harvard Journal Of Law and Public Policy, Vol. 8 No. 3, Summer 1985.....10

Giovanni J., Becerra, R.,
"Defining Child Abuse", 2 (1979).....10

Goldstein, J., Freud, A., Solnitt, A.,
"Before The Best Interests of The Child", 13 (1990).....11

Spiegel, Lawrence,
"A Question of Innocence", Unicorn Publishing House, Morris Hills, NJ (1987).....12

Underwager, Ralph,
"False Accusations of Child Abuse", Charles C. Thomas Publishers Boston, MA (1989).....11

Wexler, Richard,
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SUPREME COURT OF THE UNITED STATES OF AMERICA

JURISDICTION

This petition arises out of the final Order of the United States Court of Appeals for the Third Circuit entered on February 6, 1998, affirming the dismissal of the case by the District Court, based upon Younger abstention. Original jurisdiction was pursuant to 42 USC Sec. 1983 and 123131 et seq. Appellate jurisdiction was pursuant to FRAP 11, 12(c)and FRCP 54(b). Jurisdiction in this Honorable Court is pursuant to Supreme Court Rule 10 (a) (c), 28 USC 2101(c). The petition was timely filed on May 6, 1998.

CONSTITUTIONAL PROVISIONS, STATUTES AND ACTS

The statutory provisions involved include relevant portions of the Civil Rights Act of 1866 and 1871, 42 USC Sec.1981 and 1983 respectively. The Child Abuse Prevention and Treatment Act of 1973, 42 USC 5101 et seq. and related provisions of the Social Security Act, 42 USC 670 et seq., specifically 42 USC Sec. 671(a)(8)-(15). The Americans with Disabilities Act Titles I, II, III, 42 USC Sec 12101 et seq. specifically 42 USC Sec.12112 (B)(6). 18 USC Sec. 242, and N.J.S.A. 9:6-8.21c. Relevant portions of same are reproduced in the Appendix, A-pp.48-62 .

PROCEDURAL HISTORY

This case dates back to early 1987, when the Division of Youth and Family Services (hereinafter DYFS), made the first intervention with the Bellesfield family, consisting of Mr. Michael Bellesfield and his son Eric, then age seven. Between 1987 and 1994 DYFS conducted no fewer than six investigations of same, yet their OWN FILES show that NOT ONE incident was substantiated as abuse A-p 67. Ostensibly, statements made by Eric sparked most of these events.

In January 1994, appellant revoked that agreement. As a result DYFS filed a petition for protective custody. Although review

hearings were held in 1994 and 1995, resulting in Orders extending DYFS custody and Eric was placed in foster care, no full plenary hearing held until July 18, 1995. The child was held for almost two years without any due process. After a two day hearing in New Jersey Superior Court, the Judge found Eric to be an abused child under NJSA 9:6-8, despite the fact that there was not one documented incident of abuse substantiated, according to their own files.

Appellant filed suit in Federal District Court for relief on behalf of himself and his son on 3/11/97. It was originally brought as a "hybrid" complaint under both 42 USC 1983 and as a writ of habeas corpus. The Court would not accept the Complaint in that form and issued an Order to Show Cause, on 3/18/97, which required that the appellant file an amended Complaint and/or show why the matter should not be dismissed. An amended Complaint was filed under 42 USC 1983 and 12131 et seq. on March 25, 1997 and was accepted by the Court, along with a motion for injunctive and declaratory relief, seeking the release of Eric and redress of damages for violations of Constitutional rights. The motion for injunctive relief was denied and on 4/23/97. The District Court issued its Final Order on 6/26/97 and abstained under the Younger doctrine and dismissed the case without prejudice. The Order was timely appealed and the Third Circuit affirmed on February 6, 1998.

This petition is taken from that Order.

STATEMENT OF THE CASE

Since 1987, DYFS, and the other defendants named herein, has engaged in a conspiracy that has consisted of a pattern of escalating intrusion into the life of this family. These actions were taken under color of State Law, through abuse of their discretionary power and process and violating applicable State Law, or alternatively, a State Law that is challenged here as unconstitutional.

This is a law that permits DYFS to take a child from their home on a discretionary basis. There need be no fact or evidence of abuse, but is based on predictions by DYFS workers and experts.

It is submitted that this conduct on the part of DYFS has been a systemic pattern for at least a decade, as referenced in the 1988 New Jersey Senate Hearing transcript, Lodging-A, pp 24-25, 87-88, 118-119, 140-141, 149; 155, and the N.J. Legal Services report, "Families at Risk", Lodging-B, in it's entirety. In so doing, DYFS is also violating their own mission, to keep families intact where possible.

Using heavy handed "Gestapo" like tactics, DYFS has followed the same scenario of insidious, progressive bureaucratic escalation for years. This custom and practice is a process through which DYFS, with the aid of their contracted agencies, begins intervention by means of a "Voluntary Placement Agreement," or other minimal intrusion, and then engages in a step by step escalation, using their experts to validate their requests for same.

This escalates to more intrusive interventions, toward taking the child from the home and often the termination of parental rights, especially when there are single parents and more especially single fathers, who will not automatically succumb to their authority. Such actions are taken under the guise of compelling state interests, but are unwarranted intrusions for the sake of receiving federal funding, taken in reckless disregard for the welfare of the very people they are supposed to be protecting.

This agency is fraught with systemic corruption, drunk with power and out of control. In the instant case, they took the child, despite the fact that there was NEVER ONCE any substantiation of abuse. DYFS' own records confirm this as seen on A-p.67 that was prepared by defendant Johnston. In fact, in each of the DYFS interventions, the workers stated there was not any abuse. Yet during this same time period the child was subjected to a strip search at his school and to physical abuse by the foster mother. See A-pp.69-74 which includes DYFS reports from 1992 to 1994.

In the four years that child had been in State's custody DYFS had neve contacted the child's pediatrician with regard to investigating any incidents of abuse.

The appellant now has no say whatever in any decisions regarding the care and custody of his natural son whom he raised as a single parent since infancy. He does not know where his son is, whether he is going to school or how he is doing academically.

Appellant has no idea whether the child is attending the church of his choice, violating a "hybrid" right as noted in Wisconsin v. Yoder, 406 US 205 (1972), and a clearly defined area in which the State has no right to interfere, yet do so through their abuse of power, A-p76, and A-pp6-74.

This is also true with respect to the misuse of the "Voluntary " Placement Agreement as referenced in Lodging-B in footnote 1 on page 4 of the report. It states that 75%-80% of the children now in foster care are there pursuant to such "Voluntary" agreements. It is submitted that the facts and documentary evidence, in the record below, is sufficient to establish a prima facie case, of bad faith, malfeasance of the highest order, including the forging of signatures on legal documents and falsifying reports. A-p77-78.

Even in the January 8, 1994 incident which triggered the current proceedings, the worker, Mr. Valentine, wrote in his Report, "There is no injury...no imminent danger to Eric and no need for intervention," A-p80. Then, because Eric said he did not want to go home, Mr. Valentine invoked the "Voluntary Placement Agreement" by intimidation and by lying about it's true nature. Appellant was given a routine ultimatum by the worker, which causes the abuse of that agreement; that he could either sign the "Voluntary" agreement and maintain custodial control over his son, or DYFS would get a Court Order to take him anyway. They were aided in this cause, since Eric, as a normal rebellious teenager, had learned he could manipulate his father through statements to DYFS, as indicated in DYFS finding of September 29, 1993, A-p70, also stated on A-pp69-74. Clearly, however, when the long standing DYFS record has NEVER ONCE substantiated abuse, there is NO GOOD FAITH basis for any further State intrusion. Yet the defendants continued the escalation to change the initial goal of from "voluntarily placement" to "temporary placement" to "short term placement" to "long term placement" as seen on A-p77. For almost two years, without so much as a hearing or ANY due process, appellant was totally cut off from his son.

He had no input as to Eric's custody and was not permitted access to his child, except in a DYFS supervised setting. Yet even this was problematic, since DYFS puts these visits under a microscope and they are used in Court, as a pretext for taking even

more intrusive measures. If the parent objects to the visitation site, or requests a different site or monitor, then once again they "not cooperating." Such a scenario only buttresses the conspiracy alleged, which is perpetuated upon the unsuspecting parent who is confronted by therapists who demand that the parent admit to the alleged abuse and submit to their authority. If the parent does not, then they are said to be exhibiting denial, which again enables DYFS to state that the parent is not cooperating. This is quite a Catch 22 for the parent who is innocent of the charges.

The true motives and clear indication of the State's intentions were illustrated in their attempt to locate Mr. Bellesfield's sister. Their real goal was clearly stated in the letter written by Sharon Arnold an investigator working for defendant Warren, as seen on A-p82 in which she said:

> "In order for the child in question to be made available for adoption all efforts to locate existing relatives must be exhausted."

It is submitted that this is nothing less than a smoking gun with respect to the real DYFS agenda. Nothing more is needed to sustain the prima facie case that this was, in fact, their ultimate goal from the outset. All of this was done PRIOR to any finding of abuse by any agency or Court and without due process of law. The deprivations here, which occurred under color of state law are an egregious violation of due process rights, Federal and public policy.

During the two days of hearings in New Jersey Superior Court, testimony was taken from a variety of DYFS workers and their experts. The Court then found that Eric was abused under NJSA 9:6-8.21 (c), which is challenged constitutionally herein as being vague and ambiguous, stating in pertinent part:

> "A child who's physical, mental or emotional state has been impaired or is in imminent danger of becoming impaired..."

This statute in its current form allows the State to take a child, based on the use of predictions by their own "experts," who have no more ability to predict the future than anyone else. The finding was not based on any real incidents of abuse, since there were none, but by the "risk assessment," done by Drs. Shea and Fiore as well as the

DYFS workers. These "predictions" are at best, educated guesses, and are not within acceptable standards of their professions and surely no basis for taking a child from a parent with no evidence of abuse. Given the opportunity the appellant will present well known forensic experts who will attest to same.

Yet this testimony resulted in an Order that Eric remain in DYFS custody indefinitely. DYFS will not disclose the child's whereabouts to his father and will not permit the father access to his child, all in contravention of the very Act from which they derive their funding and authority. As the record shows, the State Court used the wrong threshold of proof needed to prevent access of a parent to their child, i.e."a preponderance," as opposed to "clear and convincing" Santosky v. Kramer, 455 US 745(1982), and wrongfully shifted the burden of proof to the parent in violation of his due process rights. When the appellant turned to the Federal Court for relief, the District Court abstained without holding a hearing and/or interviewing the child.

REASONS FOR GRANTING PETITION

POINT ONE:
FEDERALISM, FAMILY RIGHTS, AND THE CONSTITUTION

This case concerns the controversy which arises out of the confluence of competing doctrines of federalism, comity fourteenth amendment protections, Younger abstention and family rights, pursuant to 42 USC 5101 et seq. It implicates a long line of Federal case law related to perhaps one of the most important issues confronting the Nation, to wit: the sanctity of the American Family. It is submitted that the gravity of the interests at stake are of such importance that it demands the attention of this Honorable Court.

Moreover, the case also includes the nexus between the Federal Child Abuse Prevention and Treatment Act of 1973, (hereinafter "the Act") and its state corollaries, which raise even more complex issues, including whether the Act itself may actually be creating institutionalized abuse between the state agencies, in their

competition to obtain the federal funds, the very problem the Act seeks to remediate.

It is also submitted that the record established below is more than sufficient to reach a prima facie case of bad faith, harassment, malfeasance and other exceptional circumstances to overcome the propriety of invocation of abstention by the Federal Courts even if it were applicable. Further, the State Court judgement left undisturbed by the lack of intervention, is in conflict with both state and federal law, and a long line of cases, thus creating conflicting precedents.

Moreover, it is submitted that the issues raised herein are of such extraordinary public importance, this Honorable Court has deemed them;

> "Fundamental Rights of the highest order, finding their source not in state law, but in intrusive human rights as they have been understood in our Nation's history and tradition." Smith v. Org. of Foster Parents, 431 US 816 (1977).

Thus the private interest is at least as compelling as the public interest of the state: since, in truth, they are really the same, to wit: the preservation and protection of the family. Ideally, if state agencies abided by the Federal perspectives which emerge both from the legislative acts and the case law, which set an exceedingly high threshold to remove a child from its natural parents, it would mean that there would be little conflict between the state agencies and the families they serve. While there is no argument that in certain situations the state interest in protecting a child may conflict with a parent's rights, if the states followed the federal mandate, such cases should be the exception and not the rule.

Federal judicial and public policy is very clear regarding the sanctity of family rights. It is unrefuted that Federal laws set clear limits and place the highest value on parent/child relationships. They cannot easily be breached. Such cases are predicated upon clear and convincing evidence of parental unfitness, gross abuse or battering are clear and are accorded the highest level of due process. Yet the majority of state statutes regarding same are exceedingly vague and ambiguous and grant state workers broad discretion

with respect to same. Short of such evidence, intervention should be limited to other remedies and states laws must be made to conform. If that were so, cases like this, alleging that a child has been illegally taken would not arise, unless the agency had violated its mandate.

This would also effectively obviate any private versus state interest conflict. The real issue would then be federal versus state interests as it should be, when fundamental rights are alleged to have been abridged. As far back as 1937 federal law has been clear, in that parental rights;

> "Are implicit in the concept of ordered liberty [such that...neither liberty nor justice would exist if they were sacrificed." Palko v. Connecticut, 302 US 319 in (1937).

In Moore v. City of Cleveland, 431 US 494 (1977), the Court stated that these rights, "Are deeply rooted in the Nation's history and tradition." The rights to conceive and raise one's children have been deemed "essential," Meyer v. Nebraska, 262 US 390, 399 (1923), "basic civil rights of man" Skinner v. Oklahoma, 316 US 535, 541 (1942), and "rights far more precious...than property rights." May v. Anderson 345 US 528, 533 (1953). In Stanley v. Illinois, 405 US 645 (1972) the Court stated;

> " The private interest here, that of a man in the children he has sired and raised, undeniably warrants deference and, absent a powerful counter-veiling interest, protection."

Abstention should not even be an option in cases such as this, when as noted in Santosky, supra, the Court stated;

> "Given the weight of the private interests at stake, the social cost of even an occasional error could be sizable...the State registers no gain toward its declared goals when it separates children from their natural parents in error."

Parents should not be deprived of their right of access to the Federal Courts, when a state may have illegally taken a child from their home. The overarching issue in this case is nothing less than one of

the most important in the history of American Jurisprudence; the preservation of the fundamental unit of society.

What is really at issue here is the balancing of the doctrines of comity, federalism and abstention, with the importance and sanctity of the family. In a long line of cases from In re Gault, 387 US 315 (1966) through Santosky v. Kramer, supra, to one of the most recent cases, Brooks v. Mississippi, (cite omitted) in which Justice Ginsberg wrote;

> "We place decrees forever terminating parental rights in the category of cases in which the State may not bolt the door to equal justice...Parental termination decrees are among the most severe forms of State action."

The issues raised here are one of the discrete areas in which the Courts have been most reticent to judge that the private interests be automatically subordinated to the doctrines of federalism and comity, which inevitably put the State interests first, and which trigger abstention by the Federal Court for the very reasons which are cited as problematic in the full opinion of Justice Ginsberg.

Ever since Brown v. the Board of Education, 347 US 483 (1954), equal protection of law has been separated into three basic components. These are "suspect categories," and "fundamental interests" which "trigger" increased scrutiny by the Federal Courts. When the right is of a fundamental nature, a hearing must be held, Bishop v. Wood, 426 US 341 (1977). This Court has long held that parental rights are raised to the level of "fundamental" Constitutional rights, equated with that of a liberty interest.

In fact, the instant matter falls within two of the three categories of cases emerging from Brown, supra, as special "suspect categories" which require greater scrutiny by the Federal Courts. The three categories of cases included are those involving race, gender and family relations, the two latter are operative here and are grounded in a long line of cases such as City of Cleburne v. Cleburne Living Center, 473 US 432 (1985); Zablocki v. Redhail, 434 US 341 (1976). When such fundamental interests are at risk, the Federal Judiciary must invoke its oversight function.

POINT TWO:
STATES ABUSE OF THE CHILD ABUSE PREVENTION AND TREATMENT ACT

The increasing intrusiveness by the State into the family seems to have had its genesis when the Congress enacted into law, the Child Abuse Prevention and Treatment Act of 1973,(hereinafter "the Act) which was an effort to raise public awareness with respect to this issue and which provided federal funding for the state agencies. As with much well-intended legislation, it had its unforeseen and unwanted side effects. Problems were complicated by the vague definitions of child abuse and neglect contained in the state statutes developed In response to the Act, in order to receive the federal funds.These place undue weight on the discretion of agency workers and ultimately State Court judges.

Most state statutes which authorize removal of the child contain ambiguous and conclusory phrase such as "lacking proper parental care" or "the environment is injurious to the child's welfare,"or "substantial risk of harm." and the one challenged here, "immediate risk of harm,," all of which call for the worker to be able to predict the future, Besharov, D. "Doing Something About Child Abuse-The Need to Narrow The Grounds For State Intervention", Harvard Journal Of Law and Public Policy, Vol. 8 No. 3, Summer 1985.

One of the unexpected consequences of the Act, was the overreaction by the public in terms of the number of reported cases, which tripled within the next ten years. Another was to cause the agencies to become entrenched in self-sustaining policies imbedded in the bureaucratic structure, for the purpose of competing for the federal funding. In addition, workers unsure of how to handle the discretion, tended to "err on the side of safety" and remove children from their homes, whom they would not have in the past.

Since child abuse and neglect are crimes, many assume there are clear statutes with respect to same, but the truth is that "Nowhere are there clear cut definitions ..."Giovanni J., Becerra, R., "Defining Child Abuse", 2 (1979). In addition the definitions tend to be very fluid and subject to current trends, cultural

differences, etc, and can be very different from one jurisdiction to another. As a consequence, neither parents nor professionals have any clear concept to guide their judgements. The noted authority C. Henry Kempe said, "child abuse is whatever the courts say it is," Besharov Ibid.

The effect of these imprecise statutes is that, legally, courts and agencies have virtually unrestricted preventive jurisdiction, but it is accomplished by overstating the ability of professionals to "predict" risks, when they cannot do so. This has caused a twofold phenomenon, both an under and overreaction by caseworkers, and a flood of lawsuits which result from both, creating an obvious Catch 22. The workers are fearful of being held responsible if something happens to a child they didn't remove from the home and more recently, fearful of suits like the one at bar if they intervene unnecessarily.

According to the National Center for the Prevention of Child Abuse, (hereinafter "NCPCA") it appears that up to half of the children taken from their homes by the state, were in no immediate danger at home and could have been safely left there, Besharov (Id.) Most experts agree and the statistics reflect, that, as was the case here, foster care is often more harmful, Goldstein, J., Freud, A., Solnitt, A., "Before The Best Interests of The Child", 13 (1990). These policies pervert the very purpose intended by the Act. Public response to the Act, has resulted in an explosion of both the number of cases reported as well as the number of false allegations, which are just as serious as child abuse itself.

These false charges further over burden the system destroy innocent families and divert resources from those who need them most, thus spawning a double tragedy. It is undisputed that fully 65% of the allegations of abuse and neglect are not substantiated. According to the National Center, from 1976 to 1986 the number of cases went from 50,000 to over 1.6 million and the number of cases which were unsubstantiated cases nearly tripled during the same period, Besharov Id.

The rise in false allegations and agency intrusiveness has become a well-known and documented national phenomenon. This problem has been covered extensively in the media and in a plethora of books, "False Accusations of Child Abuse" by Dr. Ralph

Underwager, "A Question of Innocence", by Dr. Lawrence Spiegel, and "Wounded Innocence", by Richard Wexler. There is even a book titled "The Child Abuse Industry" referring to the competition between States for the Federal funds. This led to a groundswell of the formation of family rights groups that resulted in both Federal and State congressional hearings around the country in the 1980's, including New Jersey, see Lodging-A.

The result was almost unanimous, that the various State statutes must be made to conform to the Federal perspectives so that they have a clear and practical mandate to follow which would benefit all. Absent evidence of gross abuse, children should not be taken from their homes and less intrusive measures must be used so as to protect the family, in furtherance of 42 USC Sec. 671 (a)(15). This would take the determination out of the realm of discretion, suspicion and prediction and therefore would eliminate the erroneous violation of due process rights, but has not yet occurred.

Indeed, in this most precious and treasured of liberty rights, if the state and private interest are really the same, then the only times problems would erupt would be if the States are not following the Federal mandate of the Act, and were thus trying to receive funds fraudulently. In all other cases the State should follow the Federal perspective, perhaps best expressed in the words of the Honorable Dalin Oaks of the Utah Supreme Court stating that parental rights;

> "Transcend Constitutional rights and are rooted in nature itself."

Yet the decision and Opinion of the District Court, affirmed by the Third Circuit, to abstain under Younger and dismiss the case at bar, both in its factual interpretations and legal perspectives, are not reflective at all of the professed attitudes of the Federal Judiciary, with respect to this issue, as cited supra. There could be no more important question for this Court than to determine, than whether parents beset by such grave issues are to be afforded the right of access to Federal oversight. It is thus submitted that the issue here is not Federal intrusion into state proceedings, but the reverse.

While states have an important interest in the welfare of their families, they have no right to violate the Federal Act that provides funding for same. This is a matter of the Federal government enforcing the Act, which is an imperative and is actually state

intrusion into compelling federal interests, and abstention should not even be an option.

POINT THREE:
INAPPROPRIATENESS OF ABSTENTION, DENIAL OF DUE PROCESS

In this regard appellant cites the foundational cases in this area, with respect to virtually all types of abstention, wherein each case reminds us that abstention is:

> "an extraordinary and narrow exception to the district court's duty to adjudicate a controversy..." Younger v. Harris, 401 US 37 (1971); Burford v. Sun Oil Co., 319 US 315 (1943); Railroad Comm. of Texas v. Pullman Co., 312 US 496 (1941).

In this regard, however, with respect to the questions raised by the District Court regarding the principles of federalism, comity and abstention, the plaintiff submits that these issues bars are overcome by the perspective developed herein. While the doctrines of federalism, abstention and comity all dictate "a proper respect for State functions...," This is an issue of "a proper respect for Federal functions." In addition, however, Younger abstention is not appropriate if the appellant can show:

1. The State proceedings are undertaken in bad faith or for purposes of harassment.
2. Other extraordinary circumstances exist, such as a proceeding pursuant to a flagrantly unconstitutional statute, such that deference to a State proceeding would present a significant and immediate potential for irreparable harm to the Federal interests asserted, Shall v. Joyce, 885 F2d 101, 106 (3rd Cir.1989)

In this respect, the appellant submits that, that he had a right to choose a Federal forum, Herz. v. Degnan, 648 F. 2d 201, "despite substantial litigation in the state court" for at least a single fact finding hearing, in order to protect these most basic Constitutional guarantees. This would not have prejudiced or disrupted the State

in any way, since the child was already in State custody and would remain so during the pendancy of the Federal hearing. The issues here are virtually identical to those raised in Santosky supra, in that the plaintiff is challenging the New Jersey law, NJSA 9:6-8.21c, which defines child abuse and neglect, as being unconstitutional, in that it is overbroad, unduly vague and which is, in substance, identical to the New York Family Ct.Act 614.1 (a)-(d) challenged in Santosky Id.

It is uncontested that State proceedings seeking to intervene in a parent/child relationship must be accorded the highest level of due process, since the degree of due process is measured by the extent to which one may suffer grievous loss, Goldberg v. Kelly, 397 US 254 (1970). THERE IS NO MORE GRIEVOUS LOSS THAN THAT OF A PARENT LOSING A CHILD. Moreover, the most important criterion for overriding Younger and all abstention doctrines is that due process was not accorded and that there has been far more than a prima facie showing of a ten year campaign of bad faith and harassment of this family by the State agencies, very much akin to events in Dombrowski v. Pfister, 380 US 479 (1965), in that the State has initiated numerous proceedings in an attempt to make the appellant succumb to their abusive exercise of authority.

There is a detailed long-term history of animus, harassment, and bad faith by this agency and by their own admission, they had never once substantiated any abuse. These are exactly the reasons for the 42 USC 1983 statutes, for the aid of Federal jurisdiction, including the prevention of a manifest error of law, or irreparable injury to the parties. Indeed, the Federal Court not only should exercise its discretion in oversight but is actually mandated to do so.

Further, by their actions the State has foreclosed appellant from being able to address the Federal issues in State Court, in addition to all the other exceptional circumstances. In the In the instant case, not only did the State Court apply an improper standard in terms of the legal threshold of proof pursuant to Federal guidelines to prevent the access of a parent to his child, but the family was separated for nearly two years prior, with no evidence of any abuse, before a hearing was even held.

The state proceedings did not give adequate opportunity to vindicate Federal claims, or the proceedings would never have taken

place. The very nature of the proceedings held here were repugnant to the Federal rights seeking to be vindicated. This is precisely the point made in Santosky, when it was observed that the weight and gravity of the private interests at stake were so significant as to cause society's interest in avoiding erroneous decisions so important as to require a higher standard of proof.

The very gravaman of the original Complaint at bar was that the State Court did not afford the opportunity to vindicate the Federal claims, but instead erroneously caused their deprivation, in permitting the State Officials involved to abuse their power and influence within the New Jersey Judicial System, by allowing their "predictions," shifting the burden to the defendant and using the wrong threshold of proof, i.e, "a preponderance," as opposed to "clear and convincing" pursuant to the Santosky decision. The Court in Santosky recognized both the supreme disadvantage which confronts the parent in such proceedings as well as the unique nature of the rights at stake.

> "When the State initiates a parental rights termination proceeding, it seeks not only to infringe upon a fundamental liberty interest, but to end it."

The Court goes on to far more adroitly point out the process which the appellant called "bureaucratic escalation.":

> "The State marshals an array of public resources to prove its case and to disprove the parents. At the fact finding hearing the State cannot presume that a child and his parents are adversaries, UNTIL THE STATE PROVES PARENTAL UNFITNESS... (emphasis added).
>
> The State's ability to assemble a case almost inevitably dwarfs the parents ability to mount a defense. No predetermined limits restrict the sums an agency may spend in prosecuting a given proceeding. The State's attorney usually will be expert on the issues contested and procedures employed and enjoys full access to all public records concerning the family. The State may call on experts in family relations, psychology and medicine to bolster its case. Furthermore, the primary witnesses at the hearing will be the

States own professional case workers (and experts) whom the State has empowered both to investigate the family and to testify against it. INDEED, BECAUSE THE CHILD IS ALREADY IN STATE CUSTODY, THE STATE HAS ALSO THE ABILITY TO SHAPE THE HISTORICAL EVENTS THAT FORM THE BASIS FOR TERMINATION." (emphasis added)

In evaluating the threshold of proof the Court stated:

"Given the weight of the private interests at stake the social cost of even an occasional error is sizable... the risk that a factfinder might decide to deprive an individual based solely on a few isolated instances of unusual conduct or idiosyncratic behavior, requires the higher standard to minimize the risk of such error... The [New York] Family Ct. Act violates the due process clause of the Constitution."

When the State of New York claimed that the State procedures must be viewed as a complete package, not on the basis of individual hearings, the Santosky Court responded;

"Indeed, we would have to rewrite all our precedents were we to excuse such a constitutionally defective standard of proof based on an amorphous assessment of the 'cumulative effect' of State procedures."

The very cases cited by the District Court on A-p4, which discuss the reasons for abstention, actually argue against it, with respect to issues of the gravity of the case at bar, New Orleans Public Service, Inc. v. Council of the City of New Orleans et al., 491 US 350 , 369 (1989), the Court, quoting from a case in 1821, Chens v. Virginia, (cite omitted) states:

"We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the Constitution." Id.

The Court also noted, that there is too often the tendency of the State Court to find that the agency's efforts were diligent, based upon a mandated predicate of good faith which must be accorded them. The Court in Santosky summed up the all too often scenario which results from same.

> "The fundamental liberty interest of natural parents in the care, custody and management of their children does not evaporate simply because they have not been model parents or have lost temporary custody of child to the State. Even when blood relationships are strained, parents retain a vital interest in preventing the irretrievable destruction of their family life. If anything, persons faced with forced dissolution of their parental rights have a more critical need for procedural protections ."

A Federal Court cannot stand idly by, while a State continues to show a flagrant disregard for Federal rights, secured by the Constitution to protect the family, when just one hearing could determine whether the violations have contaminated the State proceedings from the outset and if the child was being held illegally and/or against his will. Under 42 USC Sec. 1983, redress can be sought in a Federal Forum, and abstention was inappropriate and in grievous error.

POINT FOUR:
THE RULINGS MADE HERE CONFLICT WITH PRIOR FEDERAL PRECEDENTS

The instant case is, unfortunately, a graphic example of the devastating results which occur when the Federal Court does not exercise its oversight functions in cases of this nature. The District Court's ruling seems to be virtually incomprehensible, when viewed against the backdrop of the cases and arguments, supra. It would seem that the District Court summarily accepted the State's Opinion of the case, relying primarily on the procedural history recited in same, while ignoring the documentation offered by the appellant.

The documentation provided is mostly in the form of the State's own records, the strongest proof possible which could exist to

clearly support the allegations, that the child was taken without cause. Just the exhibits submitted to the District Court went far beyond a prima facie case. Moreover Most of the cases cited by the District Court in its Orders are so factually distinct as to be irrelevant.

In the New Orleans case, supra, the issue was a rate increase reimbursement for utility expenses. In O'neil v. City of Philadelphia, the issue was over parking tickets. The same is true of Kentucky West Virginia Gas Co. v. Pennsylvania Public Utility Comm., 791 F. 2d 1111, 1116 (3rd Cir. 1986). The only case which even remotely compares with the instant matter is Moore v. Sims, 4490 US 415, 423 (1979), which at least involved family matters, but deals with paternity and is not really on point at all. None of these, nor any of the other cases cited, fall within any of the especially protected groups named supra. How can these cases be compared with the gravity of parental rights? The Santosky Court was careful to note these very distinctions, especially in States where there is no right to Court appointed counsel, as is the case here. In fact the Public Defender's Office in the instant matter is a named defendant, in that they allied themselves with the State.

It would seem, however, that as a result of this perspective, the recitation of the case and the alleged incidents of abuse, in the District Court Opinion are very skewed. While each incident is recited in specific detail, the only fact missing from it is that by the State's own account, there was NEVER ONCE A FINDING OF ABUSE, according the DYFS record! This is, obviously a serious oversight.

The resulting decision to abstain is even more difficult to understand when, the gravaman of the Complaint is precisely the long term bad faith and harassment of this family, by these same State Officials. Furthermore, as is the case here, when the statute that is the foundation of the agency's authority is properly attacked on its face as being unconstitutionally vague and where injunctive relief is sought, the burden should rest more with the State. The Court in Dombrowski v. Pfister, 380 US 479 (1965) stated;

> "The State must, if it is to invoke the statutes after injunctive relief is sought, assume the burden of obtaining a permissible, narrow construction in a non-

criminal proceeding.... on this view of the vagueness doctrine, it is readily apparent that abstention serves no legitimate purpose where a statute is properly attacked on its face."

Perhaps the most perplexing part of the District Court's actions was the determination to issue such a ruling without so much as holding a hearing in which the child could have been interviewed, when it is alleged that he has been programmed and unnecessarily medicated by the State and held against his will. For the Court to seemingly continue to accord these State Officials the presumption of good faith, in light of the history of flagrant acts of bad faith and harassment, shows that the Opinion is clearly in error in that regard and appears to have decided this issue in a manner inconsistent with the case law cited supra.

The Opinion of the District Court that the appellant had not offered any proof of bad faith but only conclusory allegations, merely seems to support the fact that the Court overlooked or misunderstood the DYFS records. The Court seems to have accepted the predictions of the State experts yet ignored the results of their testing, A-p83 which revealed that the plaintiff's personality was clearly within NORMAL LIMITS and fails to support their own experts.

In addition it fails to mention three other psychological and psychiatric reports, A-pp.86-92, each of which contradicted the States contentions and were highly critical of the methods and tactics employed by DYFS. Moreover, the coercive manner in which the medical records were obtained and more importantly the manner in which they were used, are clearly violative of the Americans With Disabilities Act (hereinafter ADA) 42 USC 12131 et seq. These records were faxed to appellant at his job in a non-confidential manner and the appellant was fired a short time later. In addition, the diagnoses therein were used by the State experts in their "predictions" for the future. Their own testimony shows that they "engaged in generalizing and stereotyping" from the illgotten psychiatric diagnoses, to predict future behavior, which has been shown to be inaccurate and improper, and is specifically prohibited under ADA, Ellen v. Florida State Bd of Bar Examiners, (1994 SD Fla.) 859 Supp. 1489, 6 ADD 40, 8, FLW Fed D 321, 3 AD Cas.908; "Using the ADA To Open Gateways", Dept. Of Justice

Newsletter at 5,6 (Wash. D.C. May, 1995); Clark v. Virginia Bd. of Bar Examiners, WL79940 at 6, 7 880 F. Supp 430 (ED Va. 1995).

The issue of the Constitutional questions not having been raised in State Court, is of no significance, since the record clearly shows that the State judge would not entertain it. The same is true of the fact that no appeal was taken, since there is no requirement under 42 USC Sec. 1983 that State remedies need be exhausted. Add to this the fact that, the Opinion states that there is no irreparable or immediate injury shown by the plaintiff. If the loss of one's child is not irreparable injury, what is? These issues again raise questions as to how closely the record was scrutinized and the of sensitivity of the Court to the issues involved. It is clear that the Federal Courts have consistently held;

> "Where fundamental liberties are claimed to have been infringed, the State record must be carefully scrutinized." Blackburn v. Alabama, 361 US 199 (1960); Moore v. Michigan, 355 US 155 (1957).

In Fiske v. Kansas, 274 US 380 (1927), the Court stated:

> "State factual determinations not fairly supported by the record, cannot be conclusive of Federal rights."

Both of these issues must be called into question here, given the disparity between the Opinion and the record. Lastly, in Townsend v. Sain, Ibid, the Court stated:

> "...if any combination of facts would prove a violation of constitutional rights...and the issue of law on those facts presents a novel or difficult or problem for decision...the Federal Court MUST hold a hearing."(emphasis added)

Nothing could be more on point with the case at bar. But there is far more to the issues here, than first meet the eye There are realities of a different dimension which will not only justify, but will mandate Federal action.

POINT FIVE:
42 USC SEC.1983, THE ADA, THE NEED FOR FEDERAL INTERVENTION, ABSTENTION IN LIGHT OF BAD FAITH, MALFEASANCE AND CRIMINALITY

The provisions and three stated purposes to 42 USC Sec. 1983 are each at issue. "One is that it can override certain kinds of state laws. Secondly it provides a federal remedy where state law is inadequate and three that it provides a federal remedy where a state remedy though adequate in theory, is not available in practice," Monroe v. Pape, 365 US 167, 5 L Ed. 2d 492, 81 S Ct. 473 (1961). The last of these three is of special importance in the case at bar.

Moreover, the purpose of this right of redress was to "afford the right of access to Federal Courts, because by reason of prejudice, passion, neglect, intolerance or otherwise, state laws might not be enforced and claims of citizens to enjoyment of rights, privileges and immunities guaranteed by the Fourteenth Amendment might be denied by State Agencies," District of Columbia v. Carter , 409 US 418, 34 L Ed. 2d 613, 93 S Ct. 602 (1973).

Further, through the Civil Rights statutes, Congress specifically intended to enforce the provisions of the Fourteenth Amendment against those who carry a badge of authority of the State and/or represent it in some authority, and to determine whether they act in accordance with their authority or misuse it. Lastly, the statutes above, are established as a cause of action when such deprivations are caused by those acting under color of state law, Parratt v. Taylor, 451 US 527, 68 L Ed. 2d 420, 101 S Ct. 1908 (1981).

In addition, there may well be violations of the Americans with Disabilities Act, 42 USC 12131 et. seq., in the manner in which the father's psychiatric records were used against him, which was both unwarranted and illegal and will be discussed more fully, infra. These are all predicates upon which the petitioner relied, to seek redress in Federal District Court. If the Civil Rights Statutes, the ADA and Constitutional Rights are to be looked upon as sanctified, as they should be, and specifically the provisions under 42 USC Sec. 1983, Baker v. McCollan, 443 US 137, 61 L. Ed. 2d 433, S Ct. 2689 (1979) and when one of the express purposes of same

is to provide the right to access to a Federal Forum, "despite the fact that there may have been considerable State litigation the plaintiff should not be denied the choice of a Federal Forum," Herz, supra, especially when there are fundamental rights at issue. Most importantly, in every case, there is inevitably the proviso that any judgement can only be operable "absent evidence of fraud collusion etc," Last Chance Mining Company v. Tyler Mining Company, 157 US 683, 691. Where fraud or collusion is shown, the judgement must be considered a nullity. This is especially true when there has been "a history of harassment and/or bad faith by officials acting under color of State Law and/or evidence of official lawlessness," as stated in Cf.Georgia v. Rachel, 384 US 780;

> "In such circumstances the reasons of policy for deferring to state court adjudication are outweighed by the injury flowing from the very bringing of the proceedings, by the perversion of the very process that is supposed to provide vindication and by the need for speedy and effective action to protect federal rights."

It is apparent from the long term harassment and procedural history of this case, infra, that there is no remedy available within the State Courts. In Terrace v. Thompson, 263 US 197, 214, the Court stated:

> "Equity jurisdiction will be exercised to enjoin the threatened enforcement of a state law which contravenes the federal Constitution wherever it is essential in order effectually to protect property rights of persons against injuries otherwise irremediable: and in such a case a person who as an officer of the State is clothed with the duty of enforcing its laws..."

the Court in Santosky stated;

> "While civil disputes over property or financial concerns may be significant...they cannot be compared to the interests involved in termination proceedings...the removal of a child from the parents is as great, if not greater than a criminal penalty...it cannot even be adequately protected by

the appointment of counsel."

This Honorable Court must set some realistic guidelines as to when and whether federalism should reach circumstances as grave as these, when the delay in the state courts is part of the problem. The State Court cannot be allowed to decide when the Federal Court should abstain. This is a federal question and the Court must hold at least one fact finding hearing when there is a reasonable question that a child has been taken from the parent illegally, when as here, the record shows there was never any abuse!

It is further asserted that these defendants are no longer entitled to any presumption of good faith, because of their abuse of power and process, making it impossible for the plaintiffs to pursue or receive a full and fair hearing within the State system. The appellant did not appeal the result of the first fact finding hearing since another hearing in a new venue was to be scheduled. Yet all along, the defendants have continued to delay the proceedings and continue even now as seen in A- so that the time for a state appeal has run and appellant is left with no remedy. Further, in Fay v. Noia, supra, the Court stated:

> "Respondent's failure to appeal cannot, in the circumstances of this case be deemed an intelligent and understanding waiver of his right...such as to justify withholding of federal relief." The Federal Courts clearly have an oversight function.
>
> "When a Federal Court is properly appealed to in a case over which it has jurisdiction, it is its duty to take such jurisdiction..." Preiser et. al. v. Rodriguez et. al., 411 US 475 , 456 F. 2d 79 (1973); Willcox v. Consolidated Gas Company, 212 US 19, 40; England v. Louisiana State Board of Medical Examiners, 375 US 411, 415 (1964)

This is also true if the plaintiff might not be treated fairly by state authorities including the state judiciary, Monroe v. Pape 365 US 167, 180 (1961). In O'Neil v. City of Philadelphia, 32 F. 3d 785 (3rd Cir. 1994) this Court stated

> "...abstention is not appropriate where the federal claimant makes out a showing of bad faith harassment, or some

other extraordinary circumstance."

In Preiser, supra, Justice Brennan stated;

> "We have also recognized that review by this Court of State decisions, even when available by appeal rather than only by discretionary writ of Certiorari, is an inadequate substitute for the initial District Court determination."

In all these cases, the full faith and credit clause could only be enforced if there was a full and fair hearing on the merits. This is true even in Younger supra, which says that the "Federal Courts should not UNDULY interfere with State Court proceedings." It contains the same provision; that the judgement can only be given "full faith and credit" upon a determination that it was a "full and fair hearing," Allen v. McCurray, 449 US 90, (1980); Dist. of Columbia Court of Appeals v. Feldman, 460 US 462, 103 S. Ct. 1303, 75 L.Ed. 2d 206 (1983); Henderson v. Kibbe, 431 US 145 (1977); Nevada v. United, 463 US 110 (1983).

It is submitted that in the instance case that no plenary hearing was held for almost two years, after the child was removed and that when such a hearing did take place it was neither full nor fair and fraught with due process violations.

> "Conventional notions of finality...cannot be permitted to defeat the manifest federal policy that federal constitutional rights...shall not be denied without the fullest opportunity for federal plenary review...By relying on a rule of discretion avowedly flexible and always yielding to exceptional circumstances, this Court has refused to concede jurisdictional significance to abortive State Court proceedings." Fay v. Noia, 372 US 392, 393 (1962).

Further, the denial of due process is especially repugnant here, when a litigant is challenging the very State Law under which he is being prosecuted, (also true in Dombrowski) and contends that the statutes under which the State proceeded were overbroad and the language is so vague as to be unconstitutional. In addition the State Court used the wrong threshold of proof and wrongly shifted the burden to the appellant. In Dombrowski, supra, the Court held;

"The State must, if it is to invoke the statutes after injunctive relief has been sought, assume the burden of obtaining a permissible narrow construction in a non-criminal proceeding....on this view of the vagueness doctrine, it is readily apparent that abstention serves no legitimate purpose where a statute is properly attacked on its face."

Appellant herein is challenging the constitutionality of the state statutes in question and violations of 42 USC Sec.671(A)(8)-(15) which are actionable under 42 USC 1983, for damages and the defendants are not immune, Yvonne L. v. New Mexico Dept. Soc. Serv.(CA10 NM, 959 F.2d 883, 1992).

"The principle of abstention cannot simply be used to give the state courts the first opportunity to vindicate a federal claim is particularly significant when, as here, the statute is being attacked..." Dombrowski, supra

CONCLUSION

It is difficult to find a case that so desperately cries out for Federal intervention and modifying of the abstention doctrines. A father and son have been erroneously deprived of virtually all their fundamental rights, both procedural and substantive due process, in contravention of Federal Law and the Constitution of the United States of America, without a scintilla of evidence which would justify same.

These facts are not even disputed by the State Officials whose arrogance and abuse of influence are unbridled and now extends to the jurisdiction of this Court. If the Court does not exercise such jurisdiction, these state officials will be free to go on flagrantly and defiantly violating its most basic ideals. This Court cannot be a party to such hubris by denying to grant even so much as a hearing, when family rights, Federal issues and Federal funding are at stake.

Finally, the agencies named in the Complaint, have literally committed crimes against this family covered under 18 USC Section 242 and violations of N.J.S.A. 2C:52-34, as well as under the Act. What has gone on here is nothing short of State sponsored

kidnapping, and reaches the threshold of violating other criminal statutes as well, including state and Federal kidnapping and unlawful detention statutes as well NJSA 9:6-8,21 (c) supra, and 42 USC Sec.671 (a)(8)(15).

Moreover the very fact that this is an attempt by State Officials to receive federal funds, especially those provided by the Act, makes the acts of these State Officials criminal in nature and the very definition of Official Misconduct under NJSA 2c:30-2(a)(b) which states;

> "A public servant is guilty of Official Misconduct, when, he acts with purpose to obtain a benefit for himself or another, or to deprive another of such benefit."

The Federal Court cannot use doctrines of abstention to defer to compelling state interests if those interests involve the commission of crimes. The State of New Jersey must be held accountable, they cannot simply take a child away from a natural parent without just cause. Federal Courts must provide the oversight needed to protect against the wrongful destruction of the family, which would require but one day of the Court's time. Surely this is not too much to ask when the welfare of a family is at stake and that is all the petitioner seeks.

The emphasis on the sanctity of the family is not limited to the United States. It is so widely held and so profound that it is expressly stated in Article 12 of the Charter of the United Nations, which states;

> "No one shall be subjected to arbitrary interference with his privacy, family, home...everyone has the right of the protection of law against such interference or attacks."

We cannot allow such travesties to continue to occur in the Nation looked upon as the leader in human rights. If families who are targeted by State Officials and subjected to years of harassment cannot turn to the Federal Courts, where can they turn? Unless this Honorable Court and the Federal Judiciary take a strong stand on this issue, States will be free to continue to violate Constitutional rights and Federal law with impunity and receive federal funds for doing so.

The statistics from the NCPCA indicate that the number of

unsubstantiated allegations and unwarranted agency intrusions into the family are continuing to skyrocket and millions of innocent families are being needlessly destroyed each year. This is a Federal issue and must be treated as same. President Reagan once said that "as goes the family, so goes the Nation." If that is true, this country is in trouble. More and more Family Rights Groups are daily becoming increasingly dehumanized and frustrated by the way they are being treated by the State Agencies and Courts.

These kind of lawsuits are clogging the system and many families are becoming more radical in their approach to the problem. On May 11, 1998 there is a planned March on Washington D.C. by family rights groups from across the county. Some groups are now turning to violence and vigilantism to resolve their problems Child kidnappings are at epidemic proportions and only a small percentage are committed by non-relatives, Spiegel, L, "Expert Witness-Justice on Trial", The Forensic Examiner, Vol.7 Nos3 & 4, March/April 1998.

Only the intervention of the Federal Courts can help stem this tide and perhaps prevent an all out rebellion on the part of millions of parents. The rhetoric of many of the groups is becoming progressively more radical. They quote the words of Fredrick Douglas spoken in 1857 that are still extremely poignant in 1998:

THE LIMITS OF TYRANTS

> "Find out just what people will submit to and you have found out the exact amount of injustice which will be imposed upon them; and these will continue until they are resisted by words or deeds or with both. Power concedes nothing without demand. It never has and never will. The limits of tyrants are prescribed by the endurance of those whom they oppress."

The families and citizenry of this country have had enough. Until the Court settles this issue, more families will remain at risk on a daily basis and with them the very fabric of our society.

WHEREFORE, petitioner prays for an expedited hearing,

for the injunctive relief requested in District Court, so that it may be possible that Eric be returned prior to emancipation in July of this year and even if this is not possible, for an Order directing the District Court to prevent DYFS from concealing Eric's whereabouts after emancipation, which is their stated objective and to reinstate the rest of the case for declaratory judgement and redress of other grievances, as well as to make certain that the other Federal protections are ensured and the sanctity and dignity of the family be accorded the respect and honor it deserves.

Respectfully Submitted,

Michael Bellesfield

Date: 5/6/98

Michael Bellesfield, pro se

Supreme Court, U.S.
FILED

No. 97 1808 MAY 6 - 1998

OFFICE OF THE CLERK

IN THE

SUPREME COURT of the UNTED STATES

October Term, 1998

MICHAEL BELLESFIELD,
Petitioner

v.

ATTORNEY GENERAL OF THE STATE
OF NEW JERSEY, et.al.

On Petition For Writ Of Certiorari
To The U.S. 3rd Circuit Court of Appeals

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

MICHAEL BELLESFIELD,
pro-se
P.O. BOX 112
26-15 FOX RUN DRIVE
PLAINSBORO, N.J. 08536
(609) 716-0616

APPENDIX

94 pp

SUPREME COURT OF THE UNITED STATES OF AMERICA

APPENDIX

ORDERS, OPINIONS, AND FINDINGS ENTERED
INCONJUNCTION WITH JUDGEMENT FOR REVIEW

CONSTITUTIONAL PROVISIONS AND STATUTES
RELEVANT TO THIS CASE

OTHER RELEVANT/ESSENTIAL EXHIBITS

UNITED STATES DISTRICT COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 97-5467

MICHAEL BELLESFIELD; ERIC BELLESFIELD,
a minor

v.

ATTORNEY GENERAL OF THE STATE OF NEW JERSEY, PETER ALVINO, individually and in official capacity; NEW JERSEY DEPT. OF HUMAN SERVICES, WILLIAM WALDMAN, DIRECTOR, in official capacity only; DIVISION OF YOUTH AND FAMILY SERVICES, JAMES VALENTINE, DAVID JOHNSTON, individually and in official capacities; FAMILY ENRICHMENT PROGRAM; MORRISTOWN FORENSIC ASSOCIATES, MICHAEL SHEA, MICHAEL FIORE, individually and in official capacities; MORRIS COUNTY PUBLIC DEFENDER'S OFFICE, JOEL HARRIS, individually and in official capacity; RANDOLPH TWP. SCHOOL SYSTEM, CARMINE GAITO, NORMA MIELE, SUSAN HERSCHMAN, ERIC HERSCHMAN, individually and in official capacities; MORRIS HILLS SCHOOL SYSTEM, BRADLEY, MR., STORM, MR., individually and in official capacities; CHILD PLACEMENT REVIEW BOARD, SUZANNE WARREN, individually and in official capacity.

Michael Bellesfield,

Appellant.

On Appeal from the United States District Court

for the District of New Jersey

(D.C. No. 97-cv-01181)

District Judge: The Honorable Alfred J. Lechner, Jr.

Submitted under Third Circuit LAR 34.1(a)

January 5, 1998

Before: BECKER, ALITO and ALDISERT, Circuit Judges.

JUDGMENT

This cause came on to be considered on the record from the United States District of New Jersey and was submitted under Third Circuit LAR 34.1(a) on January 5, 1998.

On consideration whereof, it is now here ADJUDGED and ORDERED by this court that the judgment of the district court entered June 26, 1997, be and the same is hereby affirmed.

Costs taxed against the appellant.

Attest:

s "P. Douglas Sisk"

Dated: FEB 6 1998 P. Douglas Sisk

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NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 97-5467

MICHAEL BELLESFIELD; ERIC BELLESFIELD,
a minor

v.

ATTORNEY GENERAL OF THE STATE OF NEW JERSEY, PETER VERNIERO, in official capacity only; PETER ALVINO, individually and in official capacity; NEW JERSEY DEPT. OF HUMAN SERVICES, WILLIAM WALDMAN, DIRECTOR, in official capacity only; DIVISION OF YOUTH AND FAMILY SERVICES, JAMES VALENTINE, DAVID JOHNSTON, individually and in official capacities; FAMILY ENRICHMENT PROGRAM; MORRISTOWN FORENSIC ASSOCIATES, MICHAEL SHEA, MICHAEL FIORE, individually and in official capacities; MORRIS COUNTY PUBLIC DEFENDER'S OFFICE, JOEL HARRIS, individually and in official capacity; RANDOLPH TWP. SCHOOL SYSTEM, CARMINE GAITO, NORMA MIELE, SUSAN HERSCHMAN, ERIC HERSCHMAN, individually and in official capacities; MORRIS HILLS SCHOOL SYSTEM, BRADLEY, MR., STORM, MR., individually and in official capacities; CHILD PLACEMENT REVIEW BOARD, SUZANNE WARREN, individually and in official capacity.

Michael Bellesfield,

Appellant.

On Appeal from the United States District Court
for the District of New Jersey
(D.C. No. 97-cv-01181)
District Judge: The Honorable Alfred J. Lechner, Jr.

Submitted under Third Circuit LAR 34.1(a)
January 5, 1998

Before: BECKER, ALITO and ALDISERT, Circuit Judges.

(Filed FEB 06 1998)

MEMORANDUM OPINION OF THE COURT

ALDISERT, Circuit Judge.

This pro se appeal by Michael Bellesfield requires us to decide whether the district court properly applied the abstention doctrine of Younger v. Harris, 401 U.S. 37 (1971), to dismiss without prejudice an action against various New Jersey agencies and

officers. We have jurisdiction over the order dismissing the action without prejudice because the order "ended this suit so far as the District Court was concerned.: Trent v. Dial Med. of Fla., Inc., 33 F.3d 217 220 (3d Cir. 1994) (quoting United States v. Wallace & Tiernan Co., 336 U.S. 793, 794 n.1 (1949)). We will affirm the judgment of the district court.

Michael Bellesfield filed a complaint in the district court to challenge both the constitutionality of N.J. Stat. Ann. § 9:6-8.21, which governs adjudication of allegations of child abuse and neglect, and the manner in which the statute has been applied by the New Jersey courts when his son, Eric Bellesfield, was removed from his custody and placed in a foster home under the care and supervision of the New Jersey Division of Youth and Family Services. In the district court, Bellesfield named numerous defendants, including officials and agencies of the State of New Jersey and Morris County involved in protective services. The complaint purported to be a combination habeas corpus petition pursuant to 28 U.S.C. § 2255 and a civil rights complaint pursuant to 42 U.S.C. § 1983. After some threshold proceedings, Bellesfield filed an amended complaint, seeking to have the district court order an immediate release of his son from the custody of the New Jersey Division of Youth and Family Services. He also sought damages in the amount of three million dollars and a temporary injunction preventing New Jersey from going foraward with a state superior court action. He also filed a separate Motion for Injunctive Relief.

In the response to Bellesfield's Motion for Injunctive Relief, the district court ordered him to show cause why the district court should not abstain from exercising jurisdiction. The district court concluded that in deference to New Jersey's child welfare and judicial systems it could not take any action which would interfere with the child custody proceedings that are still pending in the Superior Court of New Jersey and dismissed the complaint without prejudice. this appeal followed.

I.

We agree with the district court that, in the long line of abstention doctrine decisions beginning with Younger v. Harris, the Supreme Court has enunciated a strong public policy against interference with ongoing state judicial proceedings even when a constitutional violation is alleged. Although Younger involved state court criminal proceedings, the Court has extended the doctrine to the civil context, including administrative proceedings. See Ohio Civil Rights Comm'n v. Dayton Christian Schools, Inc., 477 U.S. 619 (1986); Middlesex County Ethics Comm'n v. Garden State Bar Ass'n, 457 U.S. 423 (1982); Williams v. Redbank Bd. of Educ., 662 F. 2d. 1008 (3d. Cir. 1981).

In Middlesex, the Court set forth a three-part test to determine whether the , the Court set forth a three-part test to determine whether the Younger abstention doctrine should be applied in a particular case: (1) there must exist an ongoing state proceeding which is judicial in nature; (2) the state proceeding should implicate important state interests; and (3) the state proceeding must afford an adequate opportunity to raise any constitutional challenges. Middlesex, 457 U.S. at 432.

The district court engaged in a detailed analysis of this test and concluded that the abstention doctrine should apply. Moreover, the district curt also addressed the possibility of exceptions to the doctrine, which should be made only on a "showing of bad faith, harassment, or any other unusual circumstances that would call for equitable relief." Younger, 401 U.S. at 54.

II.

We do not deem it necessary to repeat the details of the district court's extensive analysis of the Younger abstention doctrine as applied to this case, set forth in the district court's 25-page opinion. We are satisfied with the court's reasoning.

The first prong of the test was established because there was a pending state judicial proceeding. Bellesfield admits that this

"Complaint does seek the intervention of the Federal Court during the course of state proceedings...., contrary to doctrines of federalism and abstention." App. 1- App. 20. The pending state action involves custody of Eric Bellesfield and the same set of operative facts that apply here.

The second prong was also met. The important state issue still being litigated focuses on child welfare. Questions of family relations, including custody of children, have historically been an area of state, not federal, concern. Moore v. Sims, 442 U.S. 415, 435 (1979).

the third prong requires an inquiry as to whether the state proceeding affords an opportunity to raise any constitutional challenges. Bellesfield had the opportunity to raise any constitutional issues in the state court proceedings.

We therefore conclude that the district court did not err in applying the Younger abstention doctrine and dismissing the complaint without prejudice. We have considered all arguments advanced by the parties and have concluded that no further discussion is necessary. Accordingly, the judgment of the district court will be affirmed.

TO THE CLERK:

Please file the foregoing opinion.

DATED: FEB 6 1998

s/ " Al Sisert "

Circuit Judge

February 6, 1998

United States District Court of Appeals for the Third Circuit

To: Mr. Michael Bellesfield
Robert D. Kretzer, Esq.
Paul G. Witko, Esq.
Joanne Butler, Esq.
Benjamin E. Fleischner, Esq.
M. Diana Johnston, Esq.
Saju C. Mathew, Esq.

NOTICE OF JUDGMENT

This Court's Opinion was filed and Judgment entered pursuant to Rule 36, Federal Rules of Appellate Procedure, today in case. No. **97-5467**. A copy of the opinion and judgment are enclosed herewith. Also enclosed is copy of Order filed today.

PETITION FOR REHEARING
(FRAP 40 and Third Circuit LAR 35 and IOP Chapter 9)

Rehearing by the Court in banc pursuant to Rule 40, Federal Rules of Appellate Procedure, is not favored. Third Circuit LAR 35.4. In regard to when rehearing by the court in banc might be granted, your attention is specifically directed to Third Circuit IOP Chapter 9:

IOP 9.3 Criteria for Rehearing in Banc.

IOP 9.3.1 This court strictly follows the precept of Rule 35(b), Federal Rules of Appellate Procedure, that rehearing in banc is not favored and will not be ordered unless consideration by the full court is necessary to secure or maintain uniformity of its decision or the proceeding involves a question of exceptional importance.

IOP 9.3.2 This court does not ordinarily grant rehearing in banc when the panel's statement of the law is correct

and the controverted issue is solely the application of the law to the circumstances of the case.

IOP 9.3.3 Rehearing the banc is ordinarily not granted when the only issue presented is one of state law.

Nor, except in rare cases, has the court granted rehearing in banc where the case was decided by a judgment order, a memorandum opinion, or unpublished per curiam opinion.

IOP 9.5 Rehearing In Banc on Petition by Party.

IOP 9.5.1 It is presumed that a petition for rehearing before the panel or suggestion for in banc rehearing filed by a party as provided by Rule 35(b) or 40(a), Federal Rules of Appellate Procedure, requests both panel rehearing and rehearing in banc, unless the petition for panel rehearing under Rule 40(a) states explicitly that it does not request in banc rehearing under Rule 35(b).

Statement of Counsel Where the party petitioning for rehearing in banc is represented by counsel, pursuant to Third Circuit LAR 35.1 the petition shall contain, so far as is pertinent, the following statement of counsel:

> "I express a belief, based on a reasoned and studied professional judgment, that the panel decision is contrary to decisions of the United States Court of Appeals for the Third Circuit or the Supreme Court of the United States, and that consideration by the full court is necessary to secure and maintain uniformity of decisions in this Court, to-wit, the panel's decision is contrary to the decision of this Court or the Supreme Court in [citing specifically the case or cases],
>
> Or, that this appeal involves a question of exceptional importance, to-wit [set forth in one sentence]."

The filing of petitions for rehearing or rehearing in banc is not favored. Rule 35, Federal Rules of Appellate Procedure and Third Circuit LAR 35.4. Counsel is reminded that a duty is owed to the Court commensurate with that owed to their clients not to file petitions for rehearing in banc which do not meet the rigorous requirements of Rule 35, Federal Rules of Appellate Procedure and Third Circuit LAR 35.1.

Attachments

Pursuant to Third Circuit LAR 32.3(b) and 35.2 attached to each petition for rehearing must be a copy of the judgment, order or decision of the Court as to which rehearing is sought and any memorandum or opinion of the court stating the reasons therefor.

Filing Time

A petition for rehearing may be filed within 14 days of the date of the Court's judgment or final decision was entered on the docket unless the appeal is a civil case in which the United States is a part. Rule 40(a), Federal Rules of Appellate Procedure. In a civil case in which the United States is a party, any petition for rehearing must be filed within 45 days of entry of the Court's final judgment or decision. Id. **These filing deadlines are calculated from the date of this notice**. No extension will be granted save for the most compelling reasons. The petition must be received in the Clerk's office within the time permitted for filing a petition. A petition is filed as of the date of receipt and **not** of mailing.

Pursuant to Rule 35(c), Federal Rules of Appellate Procedure, any request for rehearing by the Court in banc must be filed at the same time that a petition for panel rehearing is filed. Neither the Court's rules not its Internal Operating Procedures allow a process in which a subsequent request for rehearing in banc is filed after a petition for panel rehearing has been denied.

Form, Answer

The 15-page limit allowed by the Rule shall be strictly observed. This page limit will also be applied to any answer that the Court may request be filed.

A petition for rehearing, and any answer thereto, must comply with the requirements of Rule 32(a), Federal Rules of Appellate Procedure and Third Circuit LAR 32.1 as to form, typeface, spacing, footnotes, etc. Colored covers are not required.

The petition shall state with particularity the points of law or fact which in the opinion of the petitioner the court has overlooked or misapprehended and shall contain such argument in support of the petition as the petitioner desires to present. No answer to a petition for rehearing will be received unless requested by the court. Rule 40(a), Federal Rules of Appellate Procedure. Oral argument in support of the petition will not be permitted.

Number of Copies

An original and 15 copies of a petition for rehearing before the Court in banc is required.

An original and 3 copies of a petition for rehearing before the original panel is required.

Bill of Costs (FRAP 39 and Third Circuit LAR 39)

Filing Time

A party to who costs are allowed, who desires taxation of costs, shall file a bill of costs within 14 days after judgment. The bill of costs must be received in the Clerk's office within the 14 day period.

Form

Counsel desiring to have costs taxed against the unsuccessful party under Rule 39, Federal Rules of Appellate Procedure, must include either and

itemized statement from a printer or an affidavit of counsel, as required by the clerk's bill of costs form. Third Circuit LAR 39.4. Proof of service of the bill must be attached.

Taxation of Costs (Third Circuit LAR 39.3)

Taxation of Costs

The cost of printing or otherwise reproducing necessary copies of briefs and appendices shall be taxable according the Third Circuit LAR 39.3. That rule establishes specific amounts which will be allowed as costs.

Certificate of Service for Institutional or Incarcerated Litigant

Certification of Service

In addition to including a certificate of service, all litigants who are currently institutionalized or incarcerated would include the following statement on all documents to be filed with this Court:

> I certify that this document was given to prison officials on **[date]** for forwarding to the Court of Appeals. I certify under penalty of perjury that the foregoing is true and correct. 28 U.S.C. Sec. 1746.

Mandate (FRAP 41(a))

Issuance Time

The mandate is issued 7 days after the time for filing a petition for rehearing has expired. Rule 41(a). Federal Rules of Appellate Procedure. In most cases (in the absence of the filing of a petition for rehearing) the mandate will issue 21 days after entry of the Court's final judgment or decision. However, where the United States is a party in a civil case and in the absence of a timely filed petition for rehearing, the mandate

will issue 52 days after entry of the Court's final judgment or decision. Id.

Motion to Stay Mandate

The filing of a motion to stay issuance of the the mandate is not a prerequisite for filing a petition for writ of certiorari. Such a motion is to be filed only where issuance of the mandate will have a **substantive** effect. Third Circuit IOP Chapter 10.8.2. If issuance of the mandate will have a **substantive** effect, a motion to stay the mandate shall be filed promptly.

P. DOUGLAS SISK, Clerk

By: Carolyn Hicks
Case Manager
Direct Dial 215-597-3143

Enclosure
Rev. 1/95

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 97-5467

MICHAEL BELLESFIELD; ERIC BELLESFIELD,
a minor

v.

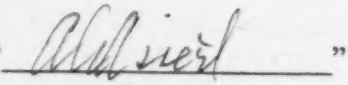
ATTORNEY GENERAL OF THE STATE OF NEW JERSEY, PETER ALVINO, individually and in official capacity; NEW JERSEY DEPT. OF HUMAN SERVICES, WILLIAM WALDMAN, DIRECTOR, in official capacity only; DIVISION OF YOUTH AND FAMILY SERVICES, JAMES VALENTINE, DAVID JOHNSTON, individually and in official capacities; FAMILY ENRICHMENT PROGRAM; MORRISTOWN FORENSIC ASSOCIATES, MICHAEL SHEA, MICHAEL FIORE, individually and in official capacities; MORRIS COUNTY PUBLIC DEFENDER'S OFFICE, JOEL HARRIS, individually and in official capacity; RANDOLPH TWP. SCHOOL SYSTEM, CARMINE GASTO, NORMA MIELE, SUSAN HERSCHMAN, ERIC HERSCHMAN, individually and in official capacities; MORRIS HILLS SCHOOL SYSTEM, BRADLEY, MR., STORM, MR., individually and in official capacities; CHILD PLACEMENT REVIEW BOARD, SUZANNE WARREN, individually and in official capacity.

Michael Bellesfield,

Appellant.

ORDER

The motion of stay for mandate is denied.

s/ "  "
Circuit Judge

cmh/cc: MB
JB
BAF
MDJ
RDK
SCM
PGW

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

MICHAEL BELLESFIELD, ERIC BELLESFIELD, a minor, Plaintiffs, v. ATTORNEY GENERAL, STATE OF NEW JERSEY, PETER VERNIERO, in official capacity only, PETER ALVINO, individually and in official capacity, NEW JERSEY DEPT. OF HUMAN SERVICES WILLIAM WALDMAN, DIRECTOR, in official capacity only, DIVISION OF YOUTH AND FAMILY SERVICES, JAMES VALENTINE, DAVID JOHNSTON, individually and in official capacities FAMILY ENRICHMENT PROGRAM, MORRISTOWN FORENSIC ASSOCIATES MICHAEL SHEA, MICHAEL FIORE, individually and in official capacities, MORRIS COUNTY PUBLIC DEFENDER'S OFFICE, JOEL HARRIS, individually and in official capacity, RANDOLPH TOWNSHIP SCHOOL SYSTEM, CARMINE GAITO, NORMA MIELE, SUSAN AND ERIC HERSCHMAN, individually and in official capacities, MORRIS HILLS SCHOOL SYSTEM, MR. BRADLEY, MR. STORM, individually and in official capacities, CHILD PLACEMENT REVIEW BOARD, SUZANNE WARREN, individually and in official capacity, Defendants.	)	CIVIL ACTION NO. 97-1181 (AJL) ORDER

This matter having come before the court upon an order to show cause, filed 23 April 1997 (the "Order to Show Cause"), and the parties having responded to the Order to Show Cause, and for the reasons set forth in a Letter-Opinion, filed on this date,

IT IS, on this 26th day of June, 1997

ORDERED, that this court will abstain from exercising jurisdiction over the instant case, and it is further

ORDERED, that the instant matter case be and hereby is dismissed without prejudice.

s/ " Alfred Lechner "
ALFRED J. LECHNER, JR. U.S.D.J.

UNITED STATES DISTRICT
DISTRICT OF NEW JERSEY
26 JUNE 1997

NOT FOR PUBLICATION

LETTER-OPINION
ORIGINAL FILED WITH THE CLERK OF THE COURT

Michael Bellesfield
P.O. Box 112
Plainsboro, New Jersey 08536
(Pro se plaintiff)

Office of the Attorney General of the State of New Jersey
Richard J. Hughes Justice Complex
CN-112
Trenton, New Jersey 8625
(Counsel for defendants Attorney General of the State of New Jersey, Peter Alvino, Department of Youth and Family Services, New Jersey Department of Human Services and Family Enrichment Program, Morristown Forensic Associates)

Joanne Butler, Esq.
Schenck, Price, Smith & King. LLP
10 Washington Street
P.O. Box 905
Morristown, New Jersey 07963-0905
(Co-Counsel for defendant Morris Hills School System)

Paul G. Witko, Esq.
Purcell, Ries, Shannon, Mulcahy & O'Neil
One Pluckemin Way
Crossroads Business Center
P.O. Box 754
Bedminister, New Jersey 07921

(Co-Counsel for defendant Morris Hills School System)

Robert D. Kretzer, Esq.
Lamb, Hartung, Kretzer, Reinman & DePascale
601 Pavonia Avenue
Jersey City, New Jersey 07306-2989
(Counsel for defendant Randolph School System)

RE: Michael Bellesfield, Eric Bellesfield v. Attorney General of the State of New Jersey, et al.
Civil Action No. 97-1181 (AJL)

Mr. Bellesfield and Counsel:

Pro se plaintiff Michael Bellesfield ("Michael Bellesfield") has brought the instant action on behalf of himself and his son Eric Bellesfield ("Eric Bellesfield"), a minor (collectively, the "Plaintiffs")[1] against Attorney General of the State of New Jersey, Peter Verniero, in his official capacity only (the "Attorney General"), Peter Alvino, individually and in his official capacity ("Alvino"), New Jersey Department of Human Services< William Waldman, Director, in his official capacity only ("Human Services"), Division of Youth and Family Services, James Valentine, David Johnston, individually and in their official capacities ("DYFS"), Family Enrichment Program, Morristown Forensic Associates, Michael Shea, Michael Fiore, individually and in their official capacities ("Family Enrichment"), Randolph Township School System, Carmine Gasto, Norma Miele, Susan and Eric Herschman, individually and in their official capacities ("Randolph School System"), Morris Hills School System, Mr. Bradley, Mr. Storm, individually and in their official capacities ("Morris School System") and Child Placement Review Board, Suzanne Warren, individually and in her official capacity ("Child

[1] Michael Bellesfield may not act as legal counsel on behalf of his Eric Bellesfield. See Amended Complaint, ¶ 1. A parent who is not an attorney "must be represented by legal counsel in bring an action on behalf of his or her minor children." Osei-Afrive v. Medical College of Pennsylvania, 937 F.2d 876, 878 (3d Cir. 1991).

Placement") (collectively, the "Defendants"). Jurisdiction is alleged pursuant to 28 U.S.C. § 1983, Amended Complaint, ¶ 1, and appears proper pursuant to 28 U.S.C. § 1343.

Currently pending is an order to show cause (the "Order to Show Cause") why this court should not abstain from exercising jurisdiction over the instant case.[2] For the reasons set forth below, this court will abstain from exercising its jurisdiction.

I. Background

A. State Court Action

On 8 January 1994, Eric Bellesfield reported to DYFS that Michael Bellesfield had dragged him from a convenience store and struck him across the chest. See DYFS v. Bellesfield, No. FN-14-33-94 (N.J. Super. Ct. 22 August 1995) (the "22 August 1195 Decision"), attached as Exhibit A to the New Jersey Response; Amended Complaint, ¶ 10. At that time, Michael Bellesfield signed a voluntary placement agreement (the "Placement Agreement") placing Eric Bellesfield in DYFS custody. See 22 August 1995 Decision at 2. Michael Bellesfield later revoked the Placement Agreement. See id.

On 14 January 1994, DYFS initiated an action (the "Superior Court Action") for an order placing Eric Bellesfield in its protective custody. See 22 August 1995 Decision at 1, 2. DYFS alleged Michael Bellesfield had abused Eric Bellesfield, as defined by N.J.S.A. 9:6-8.21(c).[3] See id.

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[2] Michael Bellesfield submitted: amended complaint (the "Amended Complaint"); Letter Brief in Response to 23 April 1997 Order to Show Cause (the "Bellesfield Response").

The Attorney General, on behalf of the Attorney General, DYFS, Alvino, Human Services and Family Enrichment submitted: letter of Sanju C. Mathew, dated 29 May 1997 (the "New Jersey Response").

Morris Hills School System submitted: letter of Paul G. Witko, dated 27 May 1997; letter of Joanne L. Butler, dated 15 May 1997.

Randolph School System submitted: letter of Robert D. Kretzer, dated 17 May 1997.

[3] N.J.S.A. 9:6-8.21(c), in pertinent part, provides:

At the time the Superior Court Action was commenced, DYFS had been required to intervene four times to protect Eric Bellesfield. See 22 August 1995 Decision at 1-2. The first intervention occurred in February 1987 when DYFS investigated reports that Michael Bellesfield left Eric Bellesfield, who was a young boy at that time, unsupervised. See Amended Complaint, ¶ 9. DYFS intervention ceased once Michael Bellesfield obtained a baby-sitter. See id. The second intervention occurred in March 1992 when Eric Bellesfield ran away from home and reported Michael Bellesfield had hit him several times. See 22 August 1995 Decision at 1-2. At that time, DYFS determined not to seek protective custody of Eric Bellesfield, but recommended that Michael and Eric Bellesfield seek therapy. See id.

On 10 April 1992, Eric Bellesfield again reported being hit by Michael Bellesfield. See 22 August 1995 Decision at 2. The DYFS case worker assigned to the case observed that Michael Bellesfield was hostile and angry. See id. DYFS, however, again did not seek protective custody of Eric Bellesfield. See id. In May 1992, Michael Bellesfield voluntarily entered a hospital for psychiatric treatment. See id. In June 1992, a psychiatrist examined Eric Bellesfield and concluded he needed both "'active sponsorship and an endorsement in a therapeutic relationship.'" See id.

On 16 August 1993, Eric Bellesfield reported being hit by Michael Bellesfield to the Massachusetts Department of Social Services. See 22 August 1995 Decision at 2. At that time, Michael Bellesfield refused therapy and also refused to accept a counseling referral for Eric Bellesfield. See id.

> a child whose physical, mental, or emotional condition has been impaired or is in imminent dange of becoming impaired as the result of the failure of his parent or guardian ... to exercise a minimum degree of care ... in providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm or substantial risk thereof, including the infliction of excessive corporal punishment; or by any other acts of a similarly serious nature requiring the aid of the Court.

N.J.S.A. 9:6-8.21(c).

After DYFS commenced the Superior Court Action and Eric Bellesfield was taken into protective custody, contact between Michael Bellesfield and Eric Bellesfield was limited to supervised church and counseling visits arranged through DYFS. See 22 August 1995 Decision at 2. Michael Bellesfield was ordered to obtain psychological evaluations, provide past psychological information and provide information about other family members. See id.

In July 1994, Michael Bellesfield sought an immediate change of custody alleging the foster parents caring for Eric Bellesfield had physically disciplined him. See 22 August 1995 Decision at 2. Michael Bellesfield sued the foster family and improperly attempted communication with them. See id.

The failure of Michael Bellesfield to comply with rules regarding church and counseling visitations led to restrictions on such access. See 22 August 1995 Decision at 2. One event leading to this restriction was when Michael Bellesfield handed a note to Eric Bellesfield during a church service. See id. The note instructed Eric Bellesfield to copy a letter prepared by Michael Bellesfield which stated Eric Bellesfield had lied and that the foster parents had hit him.[4] See id.

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[4] The note Michael Bellesfield passed to his son read:

> THEY ARE TRYING TO RUIN THE ____ YOU MUST WRITE THE FOLLOWING RIGHT HERE - RIGHT NOW (I WILL SHOW ONLY TO THE JUDGE)
>
> _____
> DEAR DAD -
> PLEASE DON'T TELL ANYONE I WROTE TO YOU. THEY WILL HURT ME IF THEY FIND OUT ___ MADE ME FILL OUT AN APPLICATION FOR RANDOLPH HIGH SCHOOL BECAUSE THEY FOUND OUT I WANT TO GO TO CATHOLIC SCHOOL. I HATE RANDOLPH. PLEASE DO WHATEVER YOU HAVE TO SO I CAN COME HOME OR SO I CAN GO WITH _____. THEY WILL HIT ME AGAIN IF YOU TELL THEM I WROTE. JUST PLEASE HELP ME

On 18 July 1995 and 19 July 1995, a trial was conducted by the New Jersey Superior Court (the "Superior Court"). See 22 August 1995 Decision at 1; Amended Complaint, 🕮 11. The Superior Court interviewed Eric Bellesfield on 4 August 1995 and later filed the 22 August 1995 Decision determining Eric Bellesfield had been abused, as defined by N.J.S.A. 9:6-8.21(c) 22 August 1995 Decision at 5. Citing the psychological evaluations indicating Michael Bellesfield suffers from "a predominantly paranoid and passive-aggressive character disorder," the court held Michael Bellesfield posed a high risk to abuse Eric Bellesfield. Id. at 4-5.

Since 22 August 1995, a number of dispositional orders have been entered by the Superior Court ordering that Eric Bellesfield remain in DYFS protective custody and directing Michael Bellesfield to enter into therapy. See New Jersey Response, Exh. B. On 16 April 1997, venue in the Superior Court Action was transferred from Morris County to Middlesex County because Michael Bellesfield had recently moved to Middlesex County. See 16 April 1997 Superior Court Order (the "16 April 1997 Order"), attached as Exhibit C to the New Jersey Response. It also appears a status review hearing was scheduled for 29 May 1997 in the Middlesex Superior Court. See New Jersey Response at 6. The Superior Court Action remains pending.

B. Procedural History

On 11 March 1997, Michael Bellesfield filed the complaint (the "Complaint") in the instant action. The paragraphs of the Complaint were not numbered, the Complaint totaled thirty-nine pages of legal and factual argument and included an appendix of more than one hundred pages. The Complaint purported to be a

---

> COME HOME. I'LL NEVER LIE AGAIN. I LOVE YOU. YOUR SON ____.
>
> _____
> IF YOU DON'T WRITE THIS WILL BE THE LAST TIME WE SEE EACH OTHER. WE NEED THIS AS A WEAPON. IS WILL BE CAREFUL WITH IT. KEEP SECRET!

22 August 1995 Decision at 3.

combination habeas corpus petition, see 28 U.S.C. § 2255, and a Civil Rights complaint. See 42 U.S.C. § 1983. Complaint at 1.

On 18 March 1997, an order (the "18 March 1997 Order") was filed. The 18 March 1997 Order indicated several deficiencies of the Complaint, including that the Complaint did not comply with Fed.R.Civ.P. 8(a), did not state a cause of action for habeas corpus relief and "seeks to interrupt ongoing State Judicial proceedings." Id. Michael Bellesfield was given leave to file an amended pleading that corrected the noted deficiencies. Id.

On 18 March 1997, Michael Bellesfield filed an emergent order to show cause (the "Bellesfield Order to Show Cause") seeking a Federal court injunction to prevent a summary hearing scheduled to be held in the Superior Court regarding the parental rights of Michael Bellesfield. See Certification of Michael Bellesfield in support to the Bellesfield Order to Show Cause, dated 17 March 1997. On 26 March 1997 Order denied the relief sought by the Bellesfield Order to Show Cause because Michael Bellesfield had not yet complied with the 18 March 1997 Order. See 26 March 1997 Order. The Bellesfield Order to Show Cause was also dismissed because the "summary hearing" Michael Bellesfield sought to enjoin could be adjourned at the request of Michael Bellesfield and, accordingly, an injunction was not necessary. Id.

On 26 March 1997, Michael Bellesfield filed the Amended Complaint seeking immediate release of Eric Bellesfield from foster care, damages in the amount of $3,000,000 and a temporary injunction preventing New Jersey from continuing the Superior Court Action. Amended Complaint, 🕮🕮 2, 25, 31, 66. On 23 April 1997, Michael Bellesfield filed a motion for injunctive relief (the "Motion"). Also on 23 April 1997, the Order to Show Cause was filed. The Order to Show Cause denied the relief sought in the Motion because Bellesfield failed to provide proof the Motion has been served upon Defendants and because it was filed prior to service of the Amended Complaint. See Order to Show Cause. Accordingly, the Motion appeared to be an improper ex parte communication.

The Order to Show Cause observed "that to grant the relief sought would disrupt the integrity of the State judicial proceedings and 'would demonstrate a lack of respect for the State as a sovereign.'" Id. (quoting New Orleans Pub. Serv., Inc. v. Council of New Orleans, 491 U.S. 350, 369, (1989)). Accordingly, Michael Bellesfield was ordered to show cause why this court should not abstain from exercising jurisdiction in this case. Id.

Discussion

A. Standard of Review

Pro se submissions "must be held to 'less stringent standards than formal pleadings drafted by lawyers.'" Estelle v. Gamble, 429 U.S. 97, 106 (1976), reh'g denied, 429 U.S. 1066 (1977) (quoting Conely v. Gibson, 355 U.S. 41, 45-46 (1957)); see also Haines v. Kerner, 404 U.S. 519, 520 (holding pro se petitioner should be able to present evidence on his Section 1983 claims unless the Conley v. Gibson "appears beyond doubt" standard satisfies court claim cannot be proved), reh'g denied, 405 U.S. 948 (1972); McDowell v. Delaware State Police, 88 F.3d 188, 189 (3d Cir. 1996); United States v. Day, 969 F.2d 39, 42 (3d Cir. 1992) (holding pro se petition cannot be held to same standard as pleadings drafted by attorneys); Lewis v. Attorney Gen. of United States, 878 F.2d 714, 722 (3d Cir. 1989).

B. Abstention

In Younger v. Harris, 401 U.S. 37, 43-44 (1971), the Supreme Court developed an abstention doctrine (the "Younger Abstention Doctrine") preventing Federal courts from interfering with pending state court proceedings, even when there is an allegation of a constitutional violation. Id. Although Younger addressed abstention in the context of enjoining pending state criminal prosecutions, the Supreme Court later extended the Younger Abstention Doctrine to include state civil proceedings, in which important state interests are implicated and where the Federal claimant has an opportunity to raise his or her constitutional claims in the state forum. See New Orleans Pub. Serv., Inc., 491 U.S. at

368; Juidice v. Vail, 430 U.S. 327, 334 (1977); Huffman v. Pursue, Ltd., 420 U.S. 592, 604, reh'g denied, 421 U.S. 921 (1975); see also Pennzoil Co. V. Texaco, Inc., 481 U.S. 1, 10-14 (1987); Ohio Civil Rights Comm'n v. Dayton Christian Schools, Inc., 477 U.S. 619, 627-29 (1986); Middlesex County Ethics Comm. v. Garden State Bar Ass'n, 457 U.S. 423, 431-32 (1982); Moore v. Sims, 442 U.S. 415, 423 (1979); FOCUS v. Allegheny County Court of Common Pleas, 75 F.3d 834, 843 (3d Cir. 1996); Marks v. Stinson, 19 F.3d 873, 883 (3d Cir. 1993).

Abstention by Federal courts developed "out of deference to the paramount interests of another state sovereign, ... the concern is with principles of comity and Federalism." Quackenbush v. Allstate Ins. Co., ___ U.S. ___, 116 S.Ct. 1712, 1724 (1996) (citing Younger, 401 U.S. at 44, 45); see also Freehold Cogeneration Assocs. v. Board of Regulatory Comm'rs, 44 F.3d 1178, 1187 n.6 (3d Cir. 1995), cert. denied, ___ U.S. ___, 116 S.Ct. 68 (1995). "For Younger purposes, the State's trials and appeals process is treated as a unitary system, and for a [F[ederal court to disrupt its integrity by intervening in mid-process would demonstrate a lack of respect for the State as sovereign." New Orleans Pub. Serv., Inc., 491 U.S. at 369.

The Court in Middlesex County Ethics Comm. articulated a three-part test to determine whether the Younger Abstention Doctrine should be applied in a particular case. 457 U.S. at 432. Under this three-part test: (1) there must be a pending or ongoing state proceeding which is judicial in nature, (2) the state proceedings must implicate important state interests and (3) the state proceeding must afford the plaintiff an opportunity to raise any constitutional issues. see id.; FOCUS V. Allegheny County. Ct. of Common Pleas, 75 F.3d 834, 843 (3d Cir. 1996) (citing Port Auth. PBA v. Port Auth. of New York & New Jersey, 973 F.2d 169, 173 (3d Cir. 1992)); Acierno v. New Castle County, 40 F.3d 645, 655 n.13 (3d Cir. 1994) (citing Marks, 19 F.3d at 882); O'Neill v. City of Philadelphia, 32 F.3d 785, 789 (3d Cir. 1994) (citing Middlesex County Ethics Comm., 457 U.S. at 432; Olde Discount Corp. v. Tupman, 1 F.3d 202, 211 (3d Cir.1993), cert. denied, 510 U.S. 1065 (1994)), cert. denied, ___ U.S. ___, 115

S.Ct. 1355 (1995); Jordan v. Fox, Rothschild, O'Brien & Frankel, 20 F.3d 1250, 1264 n.14 (3d Cir. 1994) (citing Schall v. Joyce, 885 F.2d 101, 106 (3d Cir. 1989); see also Gwynedd Properties, Inc. v. Lower Gwynedd Township, 970 F.2d 1195, 1200 (3d Cir. 1992); Kentucky West Virginia Gas Co. v. Pennsylvania Pub. Util. Comm'n, 791 F.2d 1111, 116 (3d Cir. 1986).

If these three criteria are met, a Federal court should abstain from hearing the matter unless there has been a "showing of bad faith, harassment, or any unusual circumstances that would call for equitable relief." Younger, 401 U.S. at 37; Olde Discount, 1 F.3d at 213 (citing Southland Corp. v. Keating, 465 U.S. 1 (1983)); Schall, 885 F.2d at 106.

1. Ongoing State Proceedings

The Circuit has held when there is an ongoing proceeding in state court which concerns the "very same parties and the very same issues as the present [F]ederal suit, the first requirement for Younger abstention - ongoing state proceedings of a judicial nature - is satisfied[.]" Port Auth. PBA, 973 F.2d at 173.

As indicated in both the Amended Complaint and the exhibits attached to the New Jersey Response, the Superior Court Action involves the custody of Eric Bellesfield. Amended Complaint, 🕮 11; New Jersey Response, Exhs. A-C. A hearing date was scheduled in the Superior Court Action as recently as 29 May 1997 and the case is ongoing. See New Jersey Response at 6. The argument by Michael Bellesfield that the case is not ongoing because of the change in venue, see Bellesfield Response at 3, is without merit. The Superior Court Action was moved from Morris County to Middlesex County because of the change of residence of Michael Bellesfield; the move did not affect the ongoing nature of the Superior Court Action. See 16 April 1997 Order.

The instant action has the same operative facts of the Superior Court Action. The parental rights of Michael Bellesfield and the custody of Eric Bellesfield are the core issues in both actions. See Amended Complaint, 🕮 2. Accordingly, there is an ongoing state

proceeding which is based upon the same set of operative facts as the instant action and the first requirement for Younger abstention is met.

2. Important State Interests

To grant the relief desired would require this curt to interfere with the State of New Jersey's interest in family welfare. The Circuit has stated "abstention reflects 'a strong [F]ederal policy against [F]ederal-court interference with pending state judicial proceedings absent extraordinary circumstances.'" Gwynedd Properties, 970 F.2d at 1200 (quoting Middlesex County, 457 U.S. at 431). The Circuit explained: "[T]he Supreme Court's holding in, 457 U.S. at 431). The Circuit explained: "[T]he Supreme Court's holding in Younger rested primarily on considerations of 'comity,' a concept which encompasses 'a proper respect for state functions.'" O'Neil, 32 F.3d at 791 (quoting Younger, 401 U.S. at 44). Abstention principles are applicable in civil actions "if the State's interests in the proceeding are so important that exercise of [F]ederal judicial power would disregard the comity between the States and the National Government." Pennzoil Co., 481 U.S. at 11; see also Schall, F.2d at 107.

The Supreme Court has explained:

> [W]hen we inquire into the substantiality of the State's interest in its proceedings we do not look narrowly to its interest in the outcome of the particular case -- which could arguably be offset by a substantial [F]ederal interest in the opposite outcome. Rather what we look to is the importance of the generic proceedings to the state.

New Orleans Pub. Serv., 491 U.S. at 365 (emphasis in the original). The Supreme Court and the Circuit have applied this reasoning in numerous contexts in determining that a particular state interest was important enough to meet the second requirement for Younger abstention. See, e.g., Huffman, 420 U.S. at 604 (holding that states have a substantial interest in enforcing a

nuisance statute which was closely related to a criminal proceeding); see also, e.g., New Orleans Pub. Serv., 491 U.S. at 365 (holding Louisiana has a substantial interest in regulating intrastate retail rates); Dayton Christian Schools, Inc., 477 U.S. at 628 (holding that the elimination of sex discrimination is an important enough state interest to justify Younger abstention); Middlesex County Ethics Comm., 457 U.S. at 434 (holding New Jersey's interest in maintaining and assuring the conduct of licensed attorneys is an important state interest); Moore, 442 U.S. at 435 (holding family relations are a traditional area of state concern); Trainor v. Hernandez, 431 U.S. 434, 444 (1977) (holding maintenance of the fiscal integrity of a public assistance program satisfies the Younger state interest requirement); Juidice, 430 U.S. at 335 (holding a state has an important interest in its contempt process); O'Neill, 32 F.3d at 792 (holding a city has a significant and substantial interest in the regulation of on-street parking and the system implemented to adjudicate parking violations); Olde Discount, 1 F.3d at 212 (holding a state has an interest in regulating securities transactions); Port Auth. PBA, 973 F.2d at 174 (holding state has an interest in enforcing its orders sufficient to satisfy Younger abstention); Schall, 885 F.2d at 111 (holding state has an interest in administering its judgment procedures).

Child welfare is a traditional state function. See Moore, 442 U.S. at 435. "Family relations are a traditional area of state concern .... We are unwilling to conclude that state processes are unequal to the task of accommodating various interests and deciding the constitutional questions that may arise in child-welfare litigation." Id. Accordingly, the State of New Jersey has an important interest in the instant matter.

Abstention in the instant case also protects the state interest in maintaining the integrity of the state court system. New Orleans Pub. Serv., 491 U.S. at 369. Both comity and state court integrity rest upon the importance of the states being able to enforce the orders and judgments of their courts. Pennzoil Co., 481 U.S. at 13; Juidice, 430 U.S. at 334-35. "Pennzoil held that even if the state court proceeding was between two private parties, the state's interest in ensuring that its orders and judgments not be rendered

nugatory was sufficient to require Younger test. See Moore, 442 U.S. at 431.

In the instant matter, Michael Bellesfield seeks an order voiding the custody decision of the Superior Court. Amended Complaint, 🕮 2. Such an order, however, would preempt the extensive fact finding conducted over a three year period by the Superior Court regarding the custody of Eric Bellesfield and other family-related issues. Accordingly, because this case implicates two important state interests, family welfare and integrity of the state court system, the second prong of the 2. Such an order, however, would preempt the extensive fact finding conducted over a three year period by the Superior Court regarding the custody of Eric Bellesfield and other family-related issues. Accordingly, because this case implicates two important state interests, family welfare and integrity of the state court system, the second prong of the Younger abstention test is met.

3. The Ability to Litigate Constitutional Claims in State Court

If a plaintiff has an adequate opportunity to raise his or her Federal claims in state court, the third requirement for If a plaintiff has an adequate opportunity to raise his or her Federal claims in state court, the third requirement for Younger abstention is met. Port Auth. PBA, 973 F.2d at 173 (explaining the third requirement had been satisfied where "[n]o 'state procedural law' or impediment of similar magnitude prevented, or now prevents, the [plaintiffs] from raising their constitutional concerns in the state courts."); see also Juidice, 430 U.S. at 337 ("[I]t is abundantly clear that appellees had an opportunity to present their [F]ederal claims in the state proceedings. No more is required to invoke Younger abstention."); Olde Discount, 1 F.3d at 212 (stating it is sufficient that plaintiff could bring constitutional claims in appeal of administrative proceedings to court of chancery). Plaintiffs, moreover, have the burden of showing that a state procedural bar prevents them from presenting their Federal claims. Schall, 885 F.2d at 107.

Michael Bellesfield has not shown that New Jersey law provided a procedural bar to his constitutional claims in the Superior Court Action. It appears Michael Bellesfield could have challenged the constitutionality of N.J.S.A. 9:6-8.21(c) in the Superior Court Action or on appeal. See New Jersey Response at 10. It also appears Michael Bellesfield could have appealed the 22 August 1995 Decision to the Appellate Division of the New Jersey Superior Court and challenged the custody of Eric Bellesfield in that venue. See id. While it appears Michael Bellesfield is now time-barred from raising his constitutional challenges to the 22 August 1995 Superior Court Decision, he did have an adequate opportunity to raise these issues within the ongoing Superior Court Action. Accordingly, the third requirement for Younger abstention has been met in this case.

4. Bad Faith and Extraordinary Circumstances

Even if the three Middlesex requirements are met, Younger abstention "is inappropriate where the state court proceedings are being undertaken in bad faith to harass the [F]ederal plaintiffs." Port Auth. PBA, 973 F.2d at 176. Abstention is also improper under extraordinary circumstances, "such as where a challenged statue is 'flagrantly violative of express constitutional prohibitions in every clause, sentence and paragraph' and [F]ederal abstention would cause 'irreparable injury." Id. (citing Younger, 401 U.S. at 53). These exceptions are rarely applicable. See Kessler Inst. for Rehabilitation, Inc. v. Mayor and Council of Essex Fells, 876 F.Supp. 641, 659 (D.N.J. 1995). These exceptions also require more than conclusory allegations. See Vincenti v. Hymerling, No.CIV.97-0411, 1997 WL 235126, at *7 (D.N.J. 6 May 1997) (holding plaintiff did not defeat Younger abstention by alleging he was "targeted" by the attorney disciplinary authorities).

Michael Bellesfield alleges the Superior Court Action is part of "a ten year campaign of harassment...by the State agencies." Bellesfield Brief at 3. To support his position, Michael Bellesfield cites Dombrowski v. Pfister, 380 U.S. 479 (1965) where the Supreme Court allowed intervention by the Federal court into state court criminal proceedings. The Dombrowski Court, however,

recognized: "It is generally to be assumed that State courts and prosecutors will observe constitutional limitations as expounded by this Court." Id. at 484.

In Dombrowski, the appellants argued "the threats to enforce the statutes against appellants are not made with any expectation of securing valid convictions, but rather are part of a plan to employ arrests, seizures, and threats of prosecution under color of the statutes to harass appellants and discourage them and their supporters from asserting and attempting to vindicate the constitutional rights of Negro citizens of Louisiana." Id. at 482. Dombrowski concerned the 1960's civil rights movement in the south and is, therefore, factually distinct from the instant case. Accordingly, the facts presented by Michael Bellesfield distinguish his case from Dombrowski. In addition, the Younger Court later held "the Dombrowski decision should not be regarded as having upset the settled doctrines that have always confined very narrowly the availability of injunctive relief against state criminal prosecutions." 401 U.S. at 53.

Michael Bellesfield, in support of his contention of bad faith, provides only conclusory allegations and vague references to a conspiracy involving the Attorney General, DYFS, various schools, and the Public Defender. Michael Bellesfield has merely offered conclusory allegations and has made no showing of band faith which would require intervention by this court. See Vincenti, 1997 WL 235126, at *7.

The 22 August 1995 Decision, moreover, details the evidence warranting the action taken by DYFS. There were four previous reports of abuse, findings that Michael Bellesfield suffers from psychological disorders and evidence Michael Bellesfield used his visits to attempt to manipulate Eric Bellesfield. See id. Accordingly, the bad faith exception of the Younger doctrine does not apply in this case.

Michael Bellesfield alleges the statute violates the Constitution because the lower court used the incorrect standard of review. Bellesfield Response at 5 (citing Santofsky v. Kramer, 455 U.S.

745 (1982) (holding New York child abuse statute unconstitutional)). Michael Bellesfield's argument is without merit and his reliance on Santofsky is misplaced because the plaintiffs who challenged the New York statute raise the constitutional issues at the trial level, as well as at the appellate level. Id. at 751-52. The Supreme Court found the statute unconstitutional only after complete appellate adjudication in the New York state courts. Id. In the instant case, Michael Bellesfield has not demonstrated N.J.S.A. 9.6-8.21(c) is "'flagrantly and patently violative of express constitutional prohibitions in every clause, sentence and paragraph' and [that F]ederal abstention would cause 'irreparable injury.'" Port. Auth. PBA, 973 F.2d at 176 (quoting Younger, 401 U.S. at 53). Accordingly, Michael Bellesfield's challenge of the statute does not justify the intervention of this court. The constitutionality of N.J.S.A. 9.6-8.21(c) could have been tested in the Superior Court Action.

Michael Bellesfield also argues there is the threat of irreparable harm because Eric Bellesfield may become emancipated prior to the conclusion of the state court proceedings. This concern does not justify the intervention of this court into the ongoing Superior Court Action.

The Circuit has observed: "In most-- indeed, nearly all-- circumstances in which the elements of Younger abstention are present, Younger counsels that such a delay is an appropriate price to pay for the preservation of comity between the [F]ederal government and the states." Olde Discount, 1 F.3d at 214. It appears if Michael Bellesfield complies with orders of the Superior Court, the custody issue could be resolved in a year. New Jersey Response at 6. Likewise, had Michael Bellesfield complied with the numerous dispositional orders entered since the 22 August 1995 Superior Court Order, it is possible the custody issue may have been resolved sooner. Accordingly, it does not appear there is irreparable harm in the instant matter which would be resolved by Federal court action.

Conclusion

For the reasons set forth above, the court will abstain from the exercise of jurisdiction over the instant matter. An order accompanies this opinion.

s/" Alfred Lechner "
ALFRED J. LECHNER, JR., U.S.D.J.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

MICHAEL BELLESFIELD, ERIC BELLESFIELD, a minor,	)	CIVIL ACTION NO. 97-1181 (AJL)
Plaintiffs,	)	
v.	)	ORDER TO SHOW CAUSE
ATTORNEY GENERAL, STATE OF NEW JERSEY, PETER VERNIERO, in official capacity only, PETER ALVINO, individually and in official capacity, NEW JERSEY DEPT. OF HUMAN SERVICES WILLIAM WALDMAN, DIRECTOR, in official capacity only, DIVISION OF YOUTH AND FAMILY SERVICES, JAMES VALENTINE, DAVID JOHNSTON, individually and in official capacities FAMILY ENRICHMENT PROGRAM, MORRISTOWN FORENSIC ASSOCIATES MICHAEL SHEA, MICHAEL FIORE, individually and in official capacities, MORRIS COUNTY PUBLIC DEFENDER'S OFFICE, JOEL HARRIS, individually and in official capacity, RUDOLF TWNSP. SCHOOL SYSTEM, CARMINE GAITO, NORMA MIELE, SUSAN AND ERIC HERSCHMAN, individually and in official capacities, MORRIS HILLS SCHOOL SYSTEM, MR. BRADLEY, MR. STORM, individually and in official capacities, CHILD PLACEMENT REVIEW BOARD, SUZANNE WARREN, individually and in official capacity,	)	
Defendants.	)	

This matter having come before the court upon the "Motion for Injunctive and Declaratory Relief" (the "Motion"), filed on 22 April 1997, and it appearing

- The instant action was commenced by the filing of the complaint (the "Complaint"), on 11 March 1997, by pro se plaintiff Michael Bellesfield ("Michael Bellesfield") who has also brought the instant action on behalf of his son Eric Bellesfield ("Eric Bellesfield"), a minor (collectively, the "Plaintiffs"). On 18 March 1997, an order (the "18 March 1997 Order") was filed. The 18 March 1997, an order (the "18 March 1997 Order") was filed. The 18 March 1997 Order noted several deficiencies of the Complaint, including that the Complaint did not comply with Fed.R.Civ.P. 8(a) ("Rule 8 (a)") and that the Complaint "seeks to disrupt ongoing State judicial proceedings." Id. On 26 March 1996, Michael Bellesfield filed an amended complaint (the "Amended Complaint").

- A review of the docket reveals Michael Bellesfield has failed to file proof that either the Complaint or the Amended Complaint has been served upon any defendant. Accordingly, it is impossible to determine whether the defendants have notice of the instant action. Michael Bellesfield, moreover, has also failed file proof the Motion has been served upon any defendant. See Fed.R.Civ.P. 5(b) (requiring that "every written motion other than one which may be heard ex parte" be served upon every party to the action). The Motion, therefore, appears to be an improper ex parte communication. Michael Bellesfield is advised that future ex parte communications will not be accepted.

Because the Motion has apparently been brought before service of the Amended Complaint and apparently has not been served upon defendants, it is denied.

- As indicated, the 18 March 1997 Order observed the Complaint sought "to disrupt ongoing State judicial proceedings." Id. (citing New Orleans Public Service, Inc. v. Council of City of New Orleans, 491 U.S. 350, 369 (1989); Younger v. Harris, 401 U.S. 37 (1971)). The Amended Complaint similarly seeks to disrupt ongoing State judicial proceedings. See Amended Complaint. It appears that to grant the relief sought in the Amended Complaint would disrupt the integrity of the State judicial proceedings and "would demonstrate a lack of respect for the State as a sovereign." New Orleans Public Service, 491 U.S. at 369. Abstention is appropriate where "(1) there are ongoing state proceedings that are judicial in nature; (2) the state proceedings implicate important state interests; and (3) the state proceedings afford an adequate opportunity to raise federal claims." Schall v. Joyce, 885 F.2d 101, 106 (3d Cir. 1989) (citing Middlesex County Ethics Comm. v. Garden State Bar Ass'n, 457 U.S. 423, 432 (1982); Kentucky West Virginia Gas Co. v. Pennsylvania Public Utility Comm'n, 791 F.2d 1111, 1116 (3d Cir. 1986)). In the instant case, all three factors appear present; accordingly, it appears appropriate for the court to abstain from exercising its jurisdiction.

and for good cause shown,

IT IS, on this 22nd day of April, 1997,

ORDERED, that the Motion is denied, and it is further

ORDERED, that Plaintiffs be and hereby are directed to show cause, on 19 May 1997, why the court should not abstain from exercising its jurisdiction over the instant case, and it is further

ORDERED, that Plaintiffs will forward to defendants a copy of this Order to Show Cause, together with the Amended Complaint within one business day of receipt of this Order to Show Cause, and it is further

ORDERED, that Plaintiffs shall file with this court an appropriate brief stating their position in connection with this Order to Show Cause, with a copy delivered each defendant, no later than close of business 9 May 1997, and it is further

ORDERED, that should Plaintiffs fail to submit opposition to this Order to show cause, as directed, this Order to Show Cause shall be deemed unopposed and the instant case will be dismissed and it is further

ORDERED, that defendants may submit briefs regarding this Order to Show Cause and a response to Plaintiffs' brief no later than close of business on 16 May 1997, and it is further

ORDERED, oral argument will not be heard; the decision will be based upon any written submissions received, as permitted herein.

s/" Alfred Lechner "

ALFRED J. LECHNER, JR. U.S.D.J.

SUPERIOR COURT OF NEW JERSEY

Chambers of
Catherine M. Langlois
Judge

Courthouse
P.O. Box 900
Morristown, New Jersey 07963-0900
(201) 285-6418

August 22, 1995

Jane A. Herchenroder, Esq.
117 Lakeside Drive North
Piscataway, New Jersey 08854

"Not for Publication without the Approval of the Committee on Opinions"

Joel M. Harris, Esq.
Deputy Public Defender
Office of the Public Defender
33 Market Street, 3rd floor
Morristown, New Jersey 07960

Peter D. Alvino, Esq.
Deputy Attorney General
Department of Law and Public Safety
Division of Law
P.O. Box 45029
Newark, New Jersey 07101

Re: DYFS v. Michael Bellesfield
Docket No. FN-14-33-94

Counsel:

This matter is before the court on the complaint for protective services filed January 14, 1994 in the matter of Eric Bellesfield. Trial was conducted on July 18 and 19, 1995. The court interviewed Eric on August 4th. Counsel filed written findings of fact and conclusions of law.

Findings of Fact

The complaint before the court was filed January 14, 1995. It alleged, as did the testimony presented by the Division, that there had been three previous reports of abuse of Eric by his father, Michael. In 1992, the Division followed up upon Eric's reports that he had been hit several times by his father and that his father's behavior and demeanor was so menacing that Eric would crouch and freeze. Eric had actually run away from his father at that time. The Division spoke with Mr. Bellesfield and determined not to seek protective services, however, there was the recommendation of therapy for Eric and his father.

In April 1992, Eric again spoke with a division worker and describe being hit. Mr. Lynch followed up with a discussion with services. Mr. Bellesfield was described as angry and hostile to the worker, the school, and Eric's fearful responses were observed. Indeed, Eric begged Mr. Lynch not to tell his father about his report. In May 1992, Mr. Bellesfield voluntarily entered St. Clare's for psychiatric treatment. In June 1992, Dr. Goodman examined Eric and concluded that "he needs active sponsorship and an endorsement in a therapeutic relationship."

In August 1993, there was a report from the Massachusetts Department of Social Services that Eric reported being hit by his father, his father's overreaction to the incident and to other events in the home. Ms. Pollak, the therapist who had worked with Eric and his father for six months in 1993, also reported Eric's explanation of the event, however, just when Ms. Pollak was going to discuss the matter, Mr. Bellesfield canceled sessions and did not accept any referral for Eric. Ms. Pollak concluded that Eric certainly needed counseling with his father, however, he was never returned for that recommended therapy.

In January 1994, Eric reported that his father got very angry over a shoveling incident, dragged him out of a convenience store, and hit him across the chest. The Division intervened immediately

and Mr. Bellesfield at that time signed a voluntary placement agreement. The voluntary placement was subsequently changed to a court ordered placement with a foster family, with evaluations ordered of both Eric and Mr. Bellesfield. Visitation was limited to supervised visits through the Division. Subsequently orders required Mr. Bellesfield to obtain psychological evaluations, provide past psychological information, and provide information about other family members. In July 1994, Mr. Bellesfield decided to represent himself, and sought an immediate change in the custody upon the report that the foster parent had physically disciplined Eric. Mr. Bellesfield sued the foster family and attempted communication with them. Although he was allowed to attend religious services with Eric and see him in a supervised church and therapeutic setting, subsequent orders had to be entered restricting such access due to Mr. Bellesfield's attitude and failure to comply with restrictions. Orders were entered in late 1994 compelling Mr. Bellesfield to comply with the restrictions on visitation and to cooperate with the supervised therapy through FEP and Dr. Fiore.

One of the more serious events during this time was that Mr. Bellesfield slipped a note to Eric at a church visitation. The note read:

> THEY ARE TRYING TO RUIN THE ____ YOU MUST WRITE THE FOLLOWING...RIGHT HERE - RIGHT NOW (I WILL SHOW ONLY TO THE JUDGE)
>
> _____
>
> DEAR DAD -
>
> PLEASE DON'T TELL ANYONE I WROTE TO YOU. THEY WILL HURT ME IF THEY FIND OUT ___ MADE ME FILL OUT AN APPLICATION FOR RANDOLPH HIGH SCHOOL BECAUSE THEY FOUND OUT I WANT TO GO TO CATHOLIC

SCHOOL. I HATE RANDOLPH. PLEASE DO WHATEVER YOU HAVE TO SO I CAN COME HOME OR SO I CAN GO WITH _____. THEY WILL HIT ME AGAIN IF YOU TELL THEM I WROTE. JUST PLEASE HELP ME COME HOME. I'LL NEVER LIE AGAIN. I LOVE YOU. YOUR SON _____

_____

IF YOU DON'T WRITE THIS WILL BE THE LAST TIME WE SEE EACH OTHER. WE NEED THIS AS A WEAPON. I WILL BE CAREFUL WITH IT. KEEP SECRET!

The Division has continued to recommend that Mr. Bellesfield participate in therapy, in therapeutic visitation and meetings with Eric, and comply with the recommendations with the goal of reuniting Eric and his father. It contends that protective services continue to be needed until these requirements are met.

As to Eric's status, the Division's testimony established that the first foster family care was satisfactory. June 995 Eric's home placement was changed. He has continued in therapy with Dr. Fiore. He will be entering high school this September. In his interview with the court, Eric reported the January 1994 incident where his father hit him in the chest; he has been afraid of his father; he wants his father to participate with him in a therapeutic setting, to continue counselling and work things out with him with counselling and therapy for his father. Eric has good memories of some years with his father, those in Hawaii particularly. Eric understands that the purpose of the placement is not to stop all relationship with his father, but to ultimately get him back with his father. He does not want to attend Morris Catholic. Mr. Harris, the guardian for Eric, contends that there should be a finding of abuse and neglect, scheduling a dispositional hearing with the current placement and conditions remaining intact until that hearing.

The court finds that Eric is fragile in his relationship with his father, and wants very much to see and know there is progress in his father's ability to control himself, his temper and his behavior before there is either unsupervised visitation or a return to his father's home.

Conclusions of Law

N.J.S.A. 9:6-8.21c defines an "abused or neglected child" as

> a child whose physical, mental, or emotional condition has been impaired or is in imminent danger of becoming impaired as the result of the failure of his parent or guardian ...to exercise a minimum degree of care... in providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm or substantial risk thereof, including the infliction of excessive corporal punishment; or by any other acts of a similarly serious nature requiring the aid of the Court.

Findings of such abuse or neglect are on a case-by-case basis, with the court directed to consider all the facts unique to the child, the family, and the environment.

Here, the Division and Eric reported physical abuse on January 8, 1994, with an incident of his father's anger being so explosive as to drag his son from a store and hit him across the chest. The incident is viewed particularly from the eyes of the child who had experienced and related in prior DYFS reports fear of his father, explosive and angry acts, a home of fear and "freezing" when his father acted out, and overbearing parental demands not to talk to school counsellors, to retract statements made to school personnel, and to view the school's efforts as a conspiracy.

It is also a factor that the court may consider events when the parent either interferes with access by the Division, or has in the

past had Division intervention and failed to follow its recommendations. See DYFS v. Huggins, 148 N.J. Super. 86 (Camden Cty. Ct. 1977). Parental unfitness is a personal characteristic which, ordinarily, does not vanish overnight, or even within weeks or months. An inference that such a quality persists, in the absence of any evidence that it does not, is not unreasonable. DYFS v. Wunnenburg, 167 N.J.Super. 578, 586 (App. Div. 1979) the effect of neglect upon children is also dependent upon the parent's ability or willingness to change. DYFS v. C.M., 181 N.J. Super. 190, 201 (Camden County Ct. 1981) (parent's chronic mental illness, with refusal for psychiatric treatment, and paranoia considered factors in finding of abuse and neglect).

Here, after the prior investigations by the Division, Mr. Bellesfield followed up only marginally as to counselling, evaluations, and therapeutic involvement for himself and Eric. Even after the January 8th incident, Mr. Bellesfield had to be under persistent and constant orders to get evaluations, provide information, limit access to Eric or the foster family, cooperate with the mental health personnel, be restricted in even the church environment. Most telling, he slipped that note to Eric, threatening him to be silent, encouraging Eric to say he lied, imposing his demands on Eric in a secretive and conspiratorial effort.

As the psychological evaluations establish, Mr. Bellesfield suffers from a predominantly paranoid and passive-aggressive character disorder. He maintains a strong and continued belief in a conspiracy or corruption theory by school system, the Division, and/or the caregiving families involved in Eric's life. This type of disorder can lead to explosive and intimidating behaviors, depression, decompensation, and a lack of any predictability of behaviors.

As Doctors Shea and Fiore testified, there was a risk then and risk now to Eric because Mr. Bellesfield's behavior has not changed most critically, that he still forces and expects Eric to admit that he lied about the incidents. Resistance to change and modification of

behavior, and the expectation of that recantation indicate the Mr. Bellesfield had then, and has now, a high risk of abuse against Eric.

There was not testimony to respond to these serious concerns and ongoing efforts by Mr. Bellesfield to intimidate and conspire with his son. The two witnesses certainly provided their view of a good father-son relationship, as it was so limited to church involvement or friendships. There was no testimony from his treating therapist or his psychiatrist. Mr. Bellesfield chose not to testify, a right he has, yet with a result that having determined, at the end of the State's case, that the Division's proof constituted prima facia evidence of abuse or neglect, the burden shifted to him to demonstrate non-culpability. DYFS v. S.S., 275 N.J. Super. 173 (App. Div. 1994).

The court therefore finds by a preponderance of the evidence that Eric is abused within the meaning of the statue. He has, as particularly evidenced by the January 8, 1994 incident, been and remains at substantial risk of physical, mental and emotional harm by the lack of proper guardianship and failure of his father to exercise even the minimum degree of care.

Counsel shall consult and advise the court as to the date they are all available for a dispositional hearing as soon as possible. Exhibits shall be retained with the curt file until that time. In addition, Eric shall not be ordered to attend Morris Catholic at this time. Mr. Alvino shall prepare an order consistent with this decision.

s/" Catherine Langlois "
CATHERINE M. LANGLOIS, J.S.C.

CML;gg

State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

DECISION

SPECIAL EDUCATION SETTLEMENT

OAL DKT. NO. EDS 3837-93

AGENCY DKT. NO. 93-5306

M.B.,

Petitioner

v.

RANDOLPH TOWNSHIP BOARD OF EDUCATION,

Respondent

Keith Paterson, Esq., for petitioner

Ellen S. Bass, Esq., for respondent

(Rand, Algeier, Tosti & Woodruff, attorneys)

Record Closed: June 18, 1993 Decided: June 29, 1993

BEFORE **JAMES A. OSPENSON**, ALJ:

On April 3, 1993, the petitioner requested a hearing in this matter. In accordance with 20 *U.S.C.* §1415 and 34 *C.F.R.* §300.500 (1986) *et seq.*, the Commissioner of Education requested

that administrative law judge be assigned to conduct a hearing. I was assigned by the Director of the Office of Administrative Law, pursuant to *N.J.S.A.* 52:14F-5o, to hear the matter.

Prior to the scheduled hearing date, the parties entered into settlement discussions and advised that a settlement had been reached. The settlement terms are set forth in the attached consent order.

Based upon the consent order, I CONCLUDE:

1. The parties fully understand the settlement terms.

2. The parties have voluntarily agreed to the settlement terms.

3. The settlement fully disposes of all issues in controversy and is consistent with the law.

Therefore, I **ORDER** that the parties comply with the settlement terms and that these proceedings be and are hereby **CONCLUDED**.

This order is final pursuant to 20 *U.S.C.* §1415(e) and 34 *C.F.R.* §300.509 (1986). If either party feels that the terms of the settlement are not being fully implemented, this concern should be communicated in writing to the Director of the Division of Special Education.

June 29, 1993 — s "James Ospenson"

DATE — JAMES A. OSPENSON, ALJ

amr

KEITH E. PATERSON, ESQ.
1339 Tabor Road
P.O. Box 21
Mt. Tabor, NJ 07878
(201) 625-0044
Attorney for Plaintiff

MICHAEL W. BELLESFIELD,	:	OFFICE OF ADMINISTRATIVE
Plaintiff,	:	LAW
vs.	:	OAL NO. EDS 93-5306
RANDOLPH TOWNSHIP BOARD OF EDUCATION,	:	CONSENT ORDER
Defendant.	:	

This matter having come before the Court by Keith E. Paterson, Esq., attorney for the plaintiff Michael W. Bellesfield, and the Court having witnessed the subscribed consent of counsel for both parties, and it appearing to the Court that settlement has been reached by and between the parties, and for good cause shown;

It is on this 29th day of June, 1993

ORDERED as follows:

1. Attached hereto is a certain Document Inventory, which lists documents disputed by the plaintiff. Defendant agrees to destroy each and every record listed thereon which is more than 18 months old.

2. The remaining documents on the said list shall remain at the office of Norma Miele, Randolph Township Director of Special Services. No one shall have access to the said file, except upon two days notice to the plaintiff.

3. Each of the said remaining documents shall be destroyed when it is 18 months old.

4. Plaintiff's comments dated January 19, 1993 shall be kept in and remain part of the said file.

s/ "James Ogrinc"
ALJ

We consent to the form and entry of the within Order.

RAND, ALGEIER, TOSTI and WOODRUFF, ESQS.

s/ "Keith Paterson" BY: s/ "Ellen Bass"

KEITH E. PATERSON, ESQ.
Attorney for Plaintiff

ELLEN S. BASS, ESQ.
Attorney for Defendant

DOCUMENT INVENTORY

Name of Document	Date of Document
Intervention documentation	6/25/92
Mt. Carmel reports	12/11/92
Case process note	12/22/92
Case process note	1/20/92
Case process note	2/10/92
Memo	2/11/92
Case process note	3/12/92
Case process note	3/13/92
Case process note	5/12/92
Memo	5/18/92
Memo	5/19/92
Case process note - Mahoney	5/22/92
Case process note - Miele	5/22/92
Chronology	5/27/92
Case process note	6/10/87
Case process note	7/21/88
Letter	12/12/92
Letter	12/1/92
Fax	11/29/92
Hawaii Special Services Record	1990
Discipline report	1/24/92
Discipline report	2/24/92
Discipline report	3/24/92
Incidents in music class	1/10/92
Amecdotal records	1/10/
Anecdotal records	10/30/92

Health office visits	9/11/92
Referral to child study team	7/16-17/92
Record of student counseling	Undated
School attendance	1987
School attendance	1992

CONSTITUITIONAL PROVISIONS AND STATUTES RELEVANT TO THIS CASE

TITLE 42. THE PUBLIC HEALTH AND WELFARE

CHAPTER 7. SOCIAL SECURITY ACT
TITLE IV. GRANTS TO STATES FOR AID AND SERVICES TO NEEDY FAMILIES WITH CHILDREN AND FOR CHILD WELFARE SERVICES
PART E. FEDERAL PAYMENTS FOR FOSTER CARE AND ADOPTION ASSISTANCE

42 USCS Sec. 671

§ 671. State plan for foster care and adoption assistance

(8) provides safeguards which restrict the use of or disclosure of information concerning individuals assisted under the State plan to purposes directly connected with

(A) the administration of the plan of the State approved under this part, the plan or program of the State under part A, B, or D of this subchapter (including activities under part F of this subchapter) or under subchapter I, V, X, XIV, XVI (as in effect in Puerto Rico, Guam, and the Virgin Islands), XIX, or XX of this chapter, or the supplemental security income program established by subchapter XVI of this chapter,

(B) any investigation, prosecution, or criminal or civil proceeding, conducted in connection with the administration of any such plan or program,

(C) the administration of any other Federal or federally assisted program which provides assistance, in cash or in kind, or services, directly to individuals on the basis of need,

(D) any audit or similar activity conducted in connection with the administration of any such plan or program by any governmental

agency which is authorized by law to conduct such audit or activity, and

(E) reporting and providing information pursuant to paragraph 9 to appropriate authorities with respect to known or suspected child abuse or neglect; and the safeguards so provided shall prohibit disclosure, to any committee or legislative body (other than an agency referred to in clause (D) with respect to an activity referred to in such clause), of any information which identifies by name or address any such applicant or recipient; except that nothing contained herein shall preclude a State from providing standards which restrict disclosures to purposes more limited than those specified herein, or which, in the case of adoptions, prevent disclosure entirely;

CHAPTER 21. CIVIL RIGHTS GENERALLY

42 USCS Sec 1981

Sec. 1981. Equal Rights Under the Law.

(a) Statement of equal rights

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

(b) "Make and enforce contracts" defined.

For purposes of this section, the term "make and enforce contracts" includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.

(c) Protection against impairment

The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.

42 USCS Sec 1983

Sec. 1983. Civil Action for Deprivation of Rights.

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 USCS Sec 1985

Sec. 1985. Conspiracy to interfere with civil rights

(1) Preventing officer from performing duties

If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his

property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties;

(2) Obstructing justice; intimidating party, witness, or juror

If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

(3) Depriving persons of rights or privileges

If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support

or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

CHAPTER 67. CHILD ABUSE PREVENTION AND TREATMENT AND ADOPTION REFORM GENERAL PROGRAM

42 USCS Sec. 5101

§ 5101. Office on Child Abuse and Negelct

(a) Establishment. The Secretary of Health Education and Human Services may establish an office to be known as the Office on Child Abuse and Neglect.

(b) Purpose. The purpose of the Office established under subsection (a) shall be to execute and coordinate the functions and activities of this Act. In the event that such functions and activities are performed by another entity or entities within the Department of Health an Human Services, the Secretary shall ensure that such functions and activities are executed with the necessary exoertise and in a fully coordinated manner involving regular intradepartmental and interdepartmental consultation with all agencies involved in child abuse and neglect activities.

AMENDMENTS:

1975. Act Jan 4. 1975 added subsec.(c).

1978. Act April 24, 1978, in subsec.(b), in paras. (1) and (3), substitutued "publish and diseminate" for "and publish", in para.(5)

deleted "and" folowing the concluding semicolon in para.6, substituted "and" for a period,and added para.7; in subsec.(c), added "Grants may be made under subsection (b)(5) for periods of not more than three years. Any such grant shwll bw reviewed at least annually by the Secretary utilizing peer review mechanisms to assure the quality and progress of researchconducted under such grant", and added subsec.(d).

1984. Act Oct. 9, 1984, in subsec (a), substituted "of Health, and Human Services" for "of Health, Education, and Welfare"; in subsec.(b), substituted para.(6) for one which read: "make a complete and full study and investigation of the national incidence of child abuse and neglect, including determination of the extent to which incidents of child abuse and neglect are increasing in the number or severity; and", and substituted para.(7) for one which read: "inconsultation with Federal agencies serving on the Advisory Board on Child Abuse and Neglect (established by section 6 of this Act), prepare a comprehensive plan for seeking to bring about maximum coordination of the goals, objectives, and activities of all agencies and organizations which have responsibilities for programs and actvities related to child abuse and neglect, and submit a plan to such Advisory Board not ater than twelve months after the date of enactment of this clause"; in subsec.(c), substituted "The functions of the Secretary under subsection (b) of this section may be carried out" for "The Secretary may carry out his functions under subsection (b) of this section; and added subsec.(e).

1986. Act Aug. 27, 1986, in susec.(b), redesignated former paras. (2)-(7) as paras.(3),(4),(6),(7),(8), and (9), respectively, added new parras (2) and (5), substituted para (7) as redesignated for one which read: "conduct research intom the causes of child abuse and neglect, and into the prevention, identification, and treatment thereof", and added para.(10).

1988. Act April 25, 1988 substitutd then text of this section for text which read:

"(a) The Secretary of Health and Human Services (hereinafter referred to in this Act as the "Secretary") shall establish an office to be known as the National Center on Child Abuse and Neglect (hereinafter referred to in this Act as the "Center")

"(b) The Secretary, through the Center, shall--

"(1) compile, analyze, publish, and disseminate a summary annually of recently conducted and currently conducted research on child abuse and neglect;

"(2) compile, evaluate, publish, and disseminate to each State such materials and inforamtion as may assist the States in achieving the objectives of section 4(d), including an evaluation of various methods and procedures for the investigation and prosecution of child physical and sexual abuse cases and resultant psychological trauma of the child victim;

"(3) develop and maintain an information clearing house on all programs, including private programs, showing promise of success, for prevention, identification, and treatment of child abuse and neglect;

"(4) compile, publish, and disseminate training materials for personnel who are engaged or intend to engage in the prevention, identification, and treatment of child abuse and neglect;

"(5) develop and disseminate, to appropriate State and local officials, model training materilas to assist in training law enforcement, legal, judicial, medical, mental health, and child welfare personnel in appropriate methods of interacting during investigative, administrative, and judicial proceedings with children subjected to child abuse;

"(6) provide tehnical assistance (directly throug a grant or contract) to public and non-profit private agencies and organizations to assist them in planning, improving, developing, and carrying out programs relating to the prevention, identification, and treatment of child abuse and neglect;

"(7) conduct research on the causes, prevention, identification, and treatment of child abuse and neglect, and on appropriate and effective investigative, administrative, and judicial proceedings in cases of child abuse;

"(8) make a complete and full study and investigation of the national incidence of ,child abuse and neglect, including a determination of the extent to which incidents of child abuse and neglet are increasing in number or severity; and

"(9) in consultation with Federal agencies serving on the Advisory Board on Child Abuse and Neglect (established by section 6 of this

Act), prepare a comprehensive plan for seeking to bring about maximum coordination of the goals, objectives, and activities of all agencies and organizations which have responsibilities for programs and activities related to child abuse and neglect, and submit such plan to such Advisory Board not later than twelve months after the date of enactment of this clause;

"(10) not later than two years after the first fiscal year for which funds are obligated under section 1404A of the Victims of Crime Act of 1984, the Secretary shall--

"(A) evaluate the effectiveness of assisted programs in achieving the objectives of section 4(d); and

"(B) submit a report ot the appropriate committees of the Congress of such evaluation and of technical assistance in achieving the objectives of such section provided to the States through the National Center of Child Abuse and Neglect.

The Secretary shall establish research prioritues for making grants or contracts under clause (5) of this subsection and, not less than sixty days before establishing such priorities, shall publish in the Federal Register for public comment a statement of such proposed priorities.

"(c) The functions of the Secretary under subsection (b) of this section may be carried out either directly or by way of grant or contract. Grants may be made under subsection (b)(5) for periods of not more than three years. Any such grant shall be reviewed at least annually by the Secretary, utilizing peer review mechanisms to assure the quality of progress and research conducted under such grant.

"(d) The Secretary shall make available to the Center such staff and resources as are necessary for the Center to carry out effectively it's functions under this Act.

"(e) No fund appropriated under this Act for any grant or contract may be used for any purpose other than that for which such funds were specifically authorized".

1996, Act Oct. 3, 1996 substituted this section for one which read:

"National Center on Child Abuse and Neglect

"(a) Establishment. The Secretary of Health Education and Human Services may establish an office to be known as the Office on Child Abuse and Neglect.

CHAPTER 126. EQUAL OPPORTUNITY FOR INDIVIDUALS WITH DISABILITIES

42 USCS Sec. 12101

§ 12101. Findings and purpose

(a) Findings

The Congress finds that -

(1) some 43,000,000 Americans have one or more physical or mental disabilities, and this number is increasing as the population as a whole is growing older;

(2) historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;

(3) discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services;

(4) unlike individuals who have experienced discrimination on the basis of race, color, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination;

(5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to

make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities;

(6) census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally;

(7) individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society;

(8) the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals; and

(9) the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and nonproductivity.

(b) Purpose

It is the purpose of this chapter -

(1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;

(2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;

(3) to ensure that the Federal Government plays a central role in enforcing the standards established in this chapter on behalf of individuals with disabilities; and

(4) to invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities.

42 USCS Sec. 12112

§ 12112. Discrimination

(a) General rule

No covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

(b) Construction

As used in subsection (a) of this section, the term "discriminate" includes -

(1) limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of such applicant or employee because of the disability of such applicant or employee;

(2) participating in a contractual or other arrangement or relationship that has the effect of subjecting a covered entity's qualified applicant or employee with a disability to the discrimination prohibited by this subchapter (such relationship includes a relationship with an employment or referral agency, labor union, an organization providing fringe benefits to an employee of the covered entity, or an organization providing training and

apprenticeship programs);

(3) utilizing standards, criteria, or methods of administration

(A) that have the effect of discrimination on the basis of disability; or

(B) that perpetuate the discrimination of others who are subject to common administrative control;

(4) excluding or otherwise denying equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association;

(5)(A) not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity; or

(B) denying employment opportunities to a job applicant or employee who is an otherwise qualified individual with a disability, if such denial is based on the need of such covered entity to make reasonable accommodation to the physical or mental impairments of the employee or applicant;

(6) using qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is consistent with business necessity; and

(7) failing to select and administer tests concerning employment in the most effective manner to ensure that, when such test is administered to a job applicant or employee who has a disability that impairs sensory, manual, or speaking skills, such test results accurately reflect the skills, aptitude, or whatever other factor of such applicant or employee that such test purports to measure, rather than reflecting the impaired sensory, manual, or speaking skills of such employee or applicant (except where such skills are the factors that the test purports to measure).

(c) Covered entities in foreign countries

(1) In general

It shall not be unlawful under this section for a covered entity to take any action that constitutes discrimination under this section with respect to an employee in a workplace in a foreign country if compliance with this section would cause such covered entity to violate the law of the foreign country in which such workplace is located.

(2) Control of corporation

(A) Presumption

If an employer controls a corporation whose place of incorporation is a foreign country, any practice that constitutes discrimination under this section and is engaged in by such corporation shall be presumed to be engaged in by such employer.

(B) Exception

This section shall not apply with respect to the foreign operations of an employer that is a foreign person not controlled by an American employer.

(C) Determination

For purposes of this paragraph, the determination of whether an employer controls a corporation shall be based on -

(i) the interrelation of operations;

(ii) the common management;

(iii) the centralized control of labor relations; and

(iv) the common ownership or financial control, of the employer and the corporation.

(d) Medical examinations and inquiries

(1) In general

The prohibition against discrimination as referred to in subsection (a) of this section shall include medical examinations and inquiries.

(2) Preemployment

(A) Prohibited examination or inquiry

Except as provided in paragraph (3), a covered entity shall not conduct a medical examination or make inquiries of a job applicant as to whether such applicant is an individual with a disability or as to the nature or severity of such disability.

(B) Acceptable inquiry

A covered entity may make preemployment inquiries into the ability of an applicant to perform job-related functions.

(3) Employment entrance examination

A covered entity may require a medical examination after an offer of employment has been made to a job applicant and prior to the commencement of the employment duties of such applicant, and may condition an offer of employment on the results of such examination, if -

(A) all entering employees are subjected to such an examination regardless of disability;

(B) information obtained regarding the medical condition or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record, except that -

(i) supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;

(ii) first aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and

(iii) government officials investigating compliance with this chapter shall be provided relevant information on request; and

(C) the results of such examination are used only in accordance with this subchapter.

(4) Examination and inquiry

(A) Prohibited examinations and inquiries

A covered entity shall not require a medical examination and shall not make inquiries of an employee as to whether such employee is an individual with a disability or as to the nature or severity of the disability, unless such examination or inquiry is shown to be job-related and consistent with business necessity.

(B) Acceptable examinations and inquiries

A covered entity may conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at that work site. A covered entity may make inquiries into the ability of an employee to perform job-related functions.

(C) Requirement

Information obtained under subparagraph (B) regarding the medical condition or history of any employee are subject to the requirements of subparagraphs (B) and (C) of paragraph (3).

TITLE 18 USC SECTION 242

"Whoever under color of law, statute, or ordinance, regulation, or custom, willfully subjects any inhabitants of any state to the deprivation of any rights, priviledges, or immunites secured or protected by the Constitution or Law of the United States... shall be fined no more than $1000 or imprisoned for one year, or both.".

N.J.S.A. 9:6-8.21(c)

Defines an abused or nelected child as: a child whose physical, mental, or emotional condition has been impaired or is in imminent danger of becoming impaired as the result of his parent or guardian ...to exercise a minimum degree of care...in providing the child with the proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm or substantial risk thereof, including the infliction of excessive corporal punishment; or by any other acts of a similarly serious nature requiring the aid of the court.

OTHER EXHIBITS RELEVANT TO THIS CASE

State of New Jersey
DEPT OF HUMAN SERVICES
Division of Youth and Family Svcs

Bellesfield	KC27381
Case Worker: Johnston	
Morris	

ASSESSMENT PART II

Period Covered 1-10-94 to 2-1-94

SERVICE HISTORY

Summarize previous DYFS involvment. The summary should address:
- reason(s) for prior involvment(s);
- number of 9-7(s) and finding(s);
- services provided including placements; and
- reason for the current involvement including subsequent referrals/reqs.

The Division has had seeral contacts with the Bellesfeilds in the past, they were:

February 2 1987 - Substantiated neglect of Eric, lack of supervised for long periods of time. Mr. Bellesfield corrected problem by securing a sitter that the Division confirmed.

March 8, 1992 - Unsubstantaited physical abuse. Allegations were that Mr. Bellesfield hit Eric. He ran away to the Fire Dept. seeking help. Follow-up w/family stressed counseling and securing of Mr. Bellesfield's psychiatric records. Mr. Bellesfield continued to resist DYFS intervention.

April 10, 1992 - Unsubstantiated physical abuse. This investigation revealed a child that at once was both extremely fearful of his father , then appeared to recant and defend his father. A referral to F.E.P. was made on an emergent basis. Mr. Bellesfied did not follow thru. Case was monitored. A consistant picture of this family having significant mental health issues that impact on Mr. Bellesfield's ability to parent Eric is being drawn. During this case opening Mr. Bellesfield engaged in a positive parenting class and enrolled Eric in weekly counselling at the Dutton Counselling Center. Mr. Bellesfield also contacted Dr. Gerome Goodman to do a psycho-

logical on Eric. This evaluationappeared to be superficial and focused on issues of concern to Mr. Bellesfield. All collateral info. given to Dr. Goodman by the Division received little, if no attention in the evaluation. In May, Mr. Bellesfield palced Eric privately w/ an aquaintance, Carol Hawthorne. Ms. Hawthorne is also a DYFS foster parent. Ms. Hawthorne indicates this is the third time Eric was place with her by his father, with each palcement lasting an entire school year. In June of 1992 Mr. Bellesfeild took Eric from the Hawthornes, ostensibly for a visit since he was just released from St.Clare's, however, he did not return Eric. Mr. Bellesfield continued to resist DYFS services but made an appointment to see a priest at Resurrection Parish. This illustrates Mr. Bellesfield's almost perfunctory compliance with services that probably cannot meet their needs.

August 16, 1993 - Director of a Summer program in Massechusetts alleged that Eric was kicked by his father recently. Eric revealed this to the program during his stay. Once again therapy recommend Mr. Bellesfield is still guarded and presents with the same paranoia of being persecuted. He did ... Eric in therapy at Dr. ...

January 8, 1994 - Allegations that Mr. Bellesfield assaulted Eric and child told neighbor who called police. Mr. Bellesfield cont'd to display his same paranoid ... Eric was afraid to go home. Mr. Bellesfield refused to utilize private placement and ultiately signed a voluntary placement agreement. He revoked agreement on 1/10 and court papers were filed to continue the placement until more comprehensive evaluations could be completed.

Initial Response/Incident Report
Summary of Findings Case Name Bellesfield

The father appeared relieved & told the child how frightened he had been when the child was missing. Worker discussed negative attention with both. Child agreed not to run away.

Conclusion: Abuse not substantiated –
Child had no marks/injuries consistent with abuse.

... s "Marilyn Andersen"
Marilyn Andersen
3/8/92

Initial Response/Incident Report
Summary of Findings Case Name Bellesfield

After meeting with briefly with Eric and his father together and reviewing the agreement with Eric, I left. I placed a call to Rev. Lindsey who returned my call about 9:30 pm. He agreed to keep in touch with Eric and his father over the weekend, although he could not have Eric over. He said he believes Eric exaggerates and has never found Mr. Bellesfield to be inappropriate. I called OCAC and left special instructions to be contacted in case the matter should be called in over the weekend.

CONCLUSIONS

Eric revealed a consistent account of being slapped and pushed down by his father. There were no marks or injuries from the incident, however, Eric did appear terrified of his father and the consequences of his disclosure. Upon his entry into the home Eric's account of events shifted dramatically to implicate the School in causing his disclosure and blowing the story out of proportion. He appeared intense and fearful while giving this account to his father. Upon re-interview, Eric seemed to be recanting his story and his

affect was calm and happy. He showed no fear of his father, but did verbalize he has some fear.

Mr. Bellesfield appeared preoccupied in implicating the school as the cause of his son's distress. He was guarded and intense throughout the interview. At times he appeared hostile, but remained in control.

I believe that both Eric and his father may have significant mental health problems and that Eric may be at risk of emotional abuse. There is no physical evidence of abuse to support a finding of physical abuse. An emergency F.E.P. assessment of the family is warranted to rule out emotional and physical abuse.

s "Brian Lynch"
Brian Lynch
4/20/92

Findings Report

...

There is a problem with Eric attempting to manipulate situations that could get his father and himself in trouble. Worker recommended counseling and Mr. Bellesfield agreed. Collateral with the therapist indicates that Eric is not at risk. It appeared that Mr. Bellesfield is in the process of following through with DYFS recommendation. Worker recommends that this case be closed at intake.

s "Linda Apollo"
Linda Apollo
9/29/93

REFERRAL RESPONSE REPORT

Case Number: KC273819 Case Name: Bellesfield Date: 1/8/94
Screening Worker ID: Valentine
Supervisor: McCann
Assigned Worker ID: Johnston
Supervisor: Moore

Eric was out all day shoveling snow and he was located by his father who was looking for him at Cumberland Farms. Eric states that father yelled at him and punched him in the stomach. There is no injury. Father denied that he hit child. Child is refusing to go home... Police are looking for witnesses at the store. Case was open previously for Lack of Support 1987, Child Abuse, 1993.

s "Valentine" s "Johnston" date:1/9/94 9am

s "McCann" s "Moore" date:1/10/94 10am

SYNOPSIS OF ERIC BELLESFIELD CASE
PREPARED BY: DAVID JOHNSTON, FSS II
3/17/94

The Division's most recent referral regarding Eric Bellesfield came on 1/8/94. This referral came from the Randolph Police Department. The referrant stated that Eric was out shoveling snow and was located by his father at Cumberland Farms. Eric told police that his father yelled at him and punched him in the stomach and chest area.

There is no injury. Father denies he hit child. Child refusing to leave police station. Police called OCAC and SPRU worker responded. Eric repeated his story that his father hit him and that he was afraid to go home. After much discussion, Mr. Bellesfield signed a voluntary placement agreement. Mr. Bellesfield offered no other resources, so Eric was placed in foster care.

STATEMENT TAKEN BY DYFS FROM FOSTER MOTHER

July 12th incident with Eric Bellesfield

1. Overheard Eric yelling at Joey in the next room. while at Vacation Bible School.
2. Went to see why Eric was yelling, he said Joey was hittng him with the ball while they were palying the game. I told him that if he

wanted to play war ball that he would get hit with the ball and if the game was too rough then he should leave.
3. Two minure later Joey came in crying and holding his neck. He told me Eric hit him on the neck.
4. Told Eric to come inand asked why he hit Joey in the neck and was this his way of showing revenge. He started yelling that he did not hit Joey but that he threw the ball from at least five feet. I shook him and placed him in as eat to calm down and told him to stay there.
5. Took Joey to another class so he could calm down.
6. The Pastor of our church spotted me and asked if he could see me upstairs.
7. He told me some money was missing from a teacher's purse and he wanted me to check with the boys. He also mentioned that earlier h observed Eric, Joey and a friend named Richard on the trampoline and Eric was beating Joey on the back with both fists and then smelling his butt. He said Joey was crying.
8. Then while speaking to Pastor I could hear Eric in the downstairs hallway yelling and screaming I didn't do anything I was just playing a game.
9. I proceeded out into the hallway where Eric was yelling and screaming and asked Eric why he had left the room and who gave him permission. He said he wanted to find me and tell me it was just a game and that they were playing and I could ask Richard.
10. I started to take Eric back to my classroom struggling the whole way to lead him there because he just would not calm down.
11. We arrived at my room and I tried to ask hm about the things the Pastor had mentioned and he was just yelling and screaming the entire time and I finally slapped him. This didn't seem to help, now we were both yelling so I decided to leave because we were not talking but yelling.
12. I sent him out the back way of the church and told him to get into the car but he kept yelling he wanted to talk but I was not able to talk over his screaming.
13. He proceeded out into the parking lot yelling and screaming and now the whole church was observing him. I rushed out and put him in the car hoping he would stop but now he was yelling out of the car.

14. I rushed and gathered my things and told Joey to go to the car because we had to leave.
15. As soon as I arrived home I contacted DYFS and left an urgent message for Dave Johnston to call me back.
16. Dave called me and I informed him of the situation and told him I wanted the child removed he said he would come over to speak with me which he did with two other workers.

Rosita Slocum

DYFS CASEWORKER NOTES RE: FOSTER ABUSE

State of New Jersey
DEPT of HUMAN SERVICES
Div. of Youth and Family Svcs
CONTACT SHEET

case name Bellesfield	case no.
case manager	
district office	cost center no.

M V R	contact date	Type of Contact (phone, in-person, written)	Place (office, home, etc.)	Participants (names, relationships)
	7/12	T/C from Rosita Slocum - requested that worker come to the house. She said that @ Vacation Bible School today - the Pastor saw Eric hitting Joey on the back and sniffing Joey's butt. Joey later came to her crying syaing that Eric was hitting him. Rosita also said that a little girl was missing $10.00 @ the program - She said that she probably accussed Eric of having the $ and while she realizes it was very wrong Eric was out of control today. She felt that there was probably nobody else in the program that would take the $. Eric had been asked several times today to quiet down and to stop making bazzare noises. He continued yelling and denying he was hitting Joey or sniffing his butt. She said she slapped him across the face - She says that she realizes that this was wrong and she does not need to be reacting this way. She said that it was a reaction that was an accumulation of the last six		

		months. She was asking for Eric to be removed because he continually lies and plays one person against the other. He doesn't follow thought with chores then syas he does. She asked for worker to come out and discuss the issue with her. Worker discussed this latest incident with Supv J Moore who inturn spoke with Casework Supv D. Vreiseme. Wkr was asked to respond to the home along with Foster Home Provider Carol Harris. It was determined that this was a quality of care issue, not an abusive incident, and isolated in nature.

STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES
DIVISION OF YOUTH AND FAMILY SERVICES

Christine Whitman
Governor

EDISON DISTRICT OFFICE
100 Metroplex Drive, Suite 400
Edison, New Jersey 08817-2683
(908) 819-7003

Wm. Waldman
Commissioner

Patricia Balasko-Barr
Director

February 26, 1997

Mr. Michael Bellesfield:
P.O. Box 112
Plainsboro, NJ 08536

Dear Mr. Bellesfield:

This is in response to your recent FAX to our attention and telephone conversation with Mrs. Saba.

Enclosed you will find a copy of the court order dated January 23, 1997, signed by Judge Stephan Smith of Morris County.

As you will recall when Mrs. Saba requested an opportunity to meet with you in your home, you refused to agree to a meeting. You stated the Division has custody of Eric, not you. However you appear to fail to understand that the Division has an obligation to attempt to work with parents of any of the children under our supervision.

As you will note in the order, you are directed to contact the Division to schedule a psychiatric evaluation. However in Mrs. Saba's conversation with you, you said that this will not happen. Please be reminded that you are violating the court order.

Although you indicated you wanted to discuss visitation alternatives, you would not give Mrs. Saba any furhter information. Please therfore be advised that per court order, if youn express an interest in visiting Eric, the Family Enrichment Progrm remains the designated site.

As you are also ordered to engage in therapy, we would suggest you contact Mrs. Saba for names of agencies in this county.

Your son's case was transferred to this District Office as you moved to Middesex County. You will note that you were also ordered to cooperate with the Division caseworker assigned from the Edison District Office.

Enclosed you will find a redacted copy of Eric's most recent school record. For your information, Eric at present, does not attend church.

As you indicated you had some questions about the Child Palcement Review Board recommendation, please be reminded that ahy child placement with the Division is reviewed by the the Child Palcement Review Board twice a year. The communciation you received was from Morris County Child Placement Review Board which reviewed Eric's placement on 2/6/97. The signature on the bottom is a member of the Morris County Child Placement Review Board. It appears you were present at that review and were a party to the recommendations made. Perhaps if you have any nissues to discuss with the individual board members you should contact them directly.

If you wish to discuss any of the further please feel free to call (908) 819-7003 or write to me at my office.

Sincerely,

s/" Ceil Saba "

Ceil Saba
Family Service Specialist

s/" Marilyn Harris"

Marilyn Harris, Supervising
Family Service Specialist

CS:MH:ydh

REVIEW BOARD
RECOMMENDATION TO THE JUDGE
Superior Court – Family Division
(The Child Placement Review Act-NJSA 30:4C-50 et seq.)

Child: Eric Bellesfield	DOB: 7/25/80	County: Morris	CPR Docket: FC-14-65-94
DYFS Case Mgr: Ceil Saba	DYSF Supervisor: Marilyn Harris		DYSF Case No: KC273819-11
Date Orig placement: 01/09/94	Date this placement: 04/22/96		Review Date: 02/06/97
Review Type: X 12 Month		Date of current assessment: 08/08/96	
Authority for placement: __ Voluntary X Court Ordered X Other (explain) both	Placement type (short term plan) X Residential Facility	Is this appropriate? Review Board: X Yes	
DYFS long term plan: X independent living			
1.Date long term goal achieved: 8/08/97		2.Satisfies board: NO	
3.Board permanent arrangment date: 8/98			

Board Findings:
__A. Continued placement outside home is not in childs best interest.
X B. Continued placement outside home is in childs best interest on temporary basis until long term goal is achieved.
__C. Continued placement outside home on temporary basis is in childs best interest, but there is not sufficient information...

Plan satisfies CPR (NJSA:30 4-C-52)	Plan satisfies Review Board	Is it necessary to continue placement
x Yes __ No	x Yes __ No	x Yes __ No

Chairperson CPRB (signature):
s" _____ "
((signature forged by Suzanne Warren)) Date signed: 2/10/97

the Division has been involved with this family on several occassions, the reader of this report is referred to the Division records, as they contain information regarding these referrals of Eric and his father, which will not be repeated here. It should be noted that on September 27, 1993, Catherine Pollack, Eric's therapist, stated to the DYFS worker that Mr. Bellesfield and Eric attended therapy and that she did not believe Mr. Bellesfield presented a risk to Eric. At that time, she stated that Eric was a manipulative child who did not get enough attention because of his father's work schedule. Mr. Bellesfield resumed counseling with Ms. Pollack, and the Division closed the case. However, the case was reopened on January 8, 1994, as a result of a referral from the Randolph Police Department that alleged abuse of Eric by his father. The DYFS worker who investigated the referral observed that Mr. Bellesfield "was agitated and very interested inrelating the history of his conflicts with the Randolph School District". Mr. Bellesfield denied he hit his son on this date. Eric reported that he was afraid to go home, and wanted to return to the home of Carol Hawthorne in Chester, NJ. At that time, Mr. Bellesfeild signed a voluntary placement agreement and Eric was placed in a foster home. [[BEGINNING FALSIFIED SECTION]] Approximately three days later, the Randolph Police Department was called to the Bellesfield home after reports were received that Mr. Bellesfield threatened a male there with a bat. The patrolman who responded determined that Mr. Bellesfield was a danger to himself and transported him to the hospital for psychiatric observation. One day prior to this incident, Mr. Bellesfield stated to the Division worker that he wanted Eric returned to his care and custody.
[[END OF FALSIFIED SECTION]]

...

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s" Michael Shea " Dated: 2/24/94

Michael Shea,
Morristown Forensic Associates

DYFS RESPONSE REPORT OF 1/8/94

Case Name:Bellesfield KC273819 Date:1/8/94 Worker: Valentine

Worker proceeded to Randolph PD & met with Sgt. Smith, Mr. Bellesfield & Eric Bellesfield – Mr. Bellesfield was interviewed first. He was somewhat agitated and was very concerned with relating stories about Eric in which the B of Ed. tried to classify Eric so they could build up their Special Ed. enrollment. He related a the story that this morning Eric went to walk the dog at 10 or 11 AM. He came back in & wanted to go shovel snow – ... he told Eric if you find a shovel & if you shovel our drive then you can shovel. Mr. Bellesfield explained that he lost track of time & before he realized, it was 5 PM & Eric had not called, he went out to find Eric and found him at Cumberland Farm. Eric was in the back of the store talking to a store clerk so he told Eric to leave right now - Mr. Bellesfield denied hitting or pushing Eric, But said he was very upset since Eric did not call home all day and they have a rule that Eric must call home every few hours when he is out.

Mr. Bellesfield further explained that he felt sorry for Eric who had a shovel & broom with him so he gave his son a ride home & yelled at him in the car saying "I'll break your arms and legs if you go back in that store again because the clerks are drug dealers & low lives" Mr. B. said that he would not really hurt Eric But used this as a figure of speech. Mr. B. denies that he hit Eric But he did say that he was very upset & he yelled at Eric & will punish Eric By not allowing him to Earn money By shoveling snow & By not allowing him into the Store Again. Wne Mr. B. & Eric returned home Eric was sent next door to return a shovel he had Borrowed and rather than just leave the Shovel Eric went into the home. Mr. B. was concerned about this since he does not know the neighbors. After waiting for Eric to return for about 30 minutes Mr. B. went to the neighbors home to get Eric and when he walked into the home the neighbor was calling the Randolph PD accusing Mr. B. of abusing Eric today. The police arrived & took Eric to HQ & he followed them to HQ he went home since they were calling DYFS & Came Back when the police told him I was on my way. Mr. Bellesfield appeared agitated and paranoid to some degree. He

repeated that the school was was in a conspiracy against him & Eric, and all the administrators on the Board of Ed are against Him. He did say that Eric does well in school & he follows his work closely.

Worker next met with Eric who had been discussing the situation with Sgt. Smith. Eric claimed that he was out today for 3 or 4 hours shoveling driveways & he Earned over 25 Dollars, he was at Cumberland Farms converting small bills into $10 Bills when his father came looking for him. Eric was very upset when I told him that his father denied Hitting him, Eric claimed that he did not want to go home with his father, & that I should call Mr. Lynch from DYFS for Info...

At this point worker consulted with SPRU Sup who happened to be Brian Lynch.SPRU Sup was well aware of this case...

SPRU Sup explained that Mr. Bellesfield is most volitile while under stress & that losing a job is stree provoking to Mr. Bellesfield as are situations between himself & Eric. Worker explained that I will attempt to arrange a private placement with Mr. Bellesfield with the Hawthornes since they are known to the family. &/or Voluntary Foster Care - last resort will Be to return Eric if father & Eric seem appropriate . SPRU Sup agreed with this plan. Worker attempted to offer the option of private placement and a call to the Hawthorne home Mr. Bellesfeild refused this option

At this point worker placed a call to CWS Morris DO. She was also in agreement witht th option of Voluntary FC placement, private placement or return home if parties can agree & therapy can be arranged.

<u>IT WAS CLEAR THAT THERE IS NO IMMINENT DANGER IN THIS CASE PRESENTLY SO REMOVAL WAS NOT AN OPTION</u>.

Worker again tried to negotiate a private placement with Mr. Bellesfield but he refused.

At this point I explained that Eric was very upset & should not return to his home & Mr. Bellesfield in frustration agreed that I could take Eric via court order –or- he could Sign a voluntary Foster Care Agreement. See attached Signed Voluntary Foster Care Agreement. Mr. Bellesfield stated that the system was causing serious problems for he & his son & he felt like an abuse victim. [[BEGINNING FALSIFIED PORTION]] I had Mr.

Bellesfield read & make sure that he understood the signed placement agreement & his rights as legal responsible parent & our obligation to work with him on Eric return –or- to go to court if we feel that Eric or he are inappropriate for reunification. Mr. Bellesfield stated that he understood . [[END OF FALSIFIED PORTION]] But at this point he abruptly charged out of police HQ. Worker conferenced status again with with CWS of Morris & arrangements were made for Eric to receive a physical at Dover General Hosp. (Since they called in another case)

Worker drove Eric to Dover Genral & he registerd & was given a physical Exam By Dr. Ackerman – See attached Medical Report & ER Report on Eric.

Worker consulted with on call SPRU Sup Since I could not locate a family to take Eric at that hour & worker again tried to re-contact emergency Foster Home & finally Eric was accepted for placement in the West Morris Area – See SIS for name of Foster Parents.

Worker drove Eric to Foster Home & Information is exchanged & worker left the Foster Home.

Follow up needs to Be made on Monday or Tues re: clothing check – Status of Mr. Bellesfield & Status of th Foster Home since Parents requested that this must be short term since they have three children in the Home & Babysitting 2 others.

Mr. Bellesfield's status & Mental Health Condition must also Be assessed since he was under extreme stress regarding his own situation jobless & now – his separation from Eric. It is strongly recommended that Mr. Bellesfield Be evaluated & that both he & Eric receive ongoing Family &/or Individual therapy. It should be mentioned that Eric's condition was very Calm after his father left & he was very at ease with the placement.

s "James Valentine"
James Valentine
1/9/94

attachments: 1. Voluntary Foster Car Agreement Signed by Mr. Bellesfield.
2. Medical and ER reports.

SUPERIOR COURT OF NEW JERSEY
Morris and Sussex Counties
PO Box 910
Morristown, New Jersey 07963-0910
(201) 285-6389 FAX (201)538-7664

Michael J. Arnold
Court Administrator

Edie Larsen
Family Division Mgr

Suzanne Warren
Child Placement Review
Board Coordinator

July 20, 1994

Social Security Administration
OCRO Division of Certification and Coverage
330 North Greene Street
Baltimore, Maryland 21201

Re: Terry Lorraine Kenny, Natural Mother
Patrick Kenny, Maternal Grandfather

Dear Sir or Madam,

Some time ago a letter from this office was sent to you in reference to the above-named individuals. The Family Court of Morris County, New Jersey and the Division of Youth and Family Services, State of New Jersey are currently searching for these individuals.

Terry Lorraine Kenny is the natural mother of one of ur children currently in protective custody. In order for the child in question to be made available for adoption all efforts to locate existing relatives must first be exhausted. Your cooperation in this matter is therefore of the utmost importance, and any aid which can be given in this matter is greatly appreciated.

Family Services has obtained Ms. Kenny's birth certificate. I enclose herewith a copy of same so that you may conduct your search.

Should you need to contact me, I may be reached at (201)829-8081.

Very Truly Yours,

s " Sharon Arnold "

Sharon Arnold - CPR Investigator

TM
MMPI-2

TM
MINNESOTA MULTIPHASIC PERSONALITY INVENTORY-2

By Starke R. Hathaway and J. Charnley McKinley

TM
THE MINNESOTA REPORT:
ADULT CLINICAL SYSTEM
INTERPRETIVE REPORT

By James N. Butcher

Client ID: 000001040
Report Date: 05-SEP-94
Age: 41
Sex: Male
Setting:
Education: 14
Marital Status: Divorced

MINNESOTA MULTIPHASIC PERSONALITY INVENTORY-2
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1942, 1943 (renewed 1970), 1989. This report 1991.
All Rights Reserved.

THE MINNESOTA REPORT:
ADULT CLINICAL SYSTEM ID: 000001040
INTERPRETIVE REPORT DATE: 05-SEP-94

PROFILE VALIDITY:
This is a valid MMPI-2 profile. The client's responses to the MMPI-2 validity items suggest that he cooperated with the evaluation enough to provide useful interpretive information. The resulting clinical profile is an adequate indication of his present personality functioning.

The clinical setting in which this MMPI-2 was taken has not been indicated on the answer form. The report has been processed as though "Outpatient Mental Health Program" has been indicated. The report may not be as specific as it would have been if the actual assessment setting had been designated.

SYMPTOMATIC PATTERNS:
This MMPI-2 clinical profile is within normal limits. This client did not report psychological conflicts or situational stresses that are producing great difficulty for him at this time. He appears to be dealing effectively with his life situation, and seems to be obtaining sufficient satisfaction out of life at this point. He appears to have no sex-role conflicts.

In addition the following description is suggested by the content of this client's responses. The client does not appear to be an overly anxious person prone to be developing unrealistic fears. Any fears he reports are more likely to be reality-based than internally generated. His item content suggests he is ratrher non-competitive and passive, generally easygoing, and uncritical of interpersonal situations. He appears to be happy with life and feels positive about the future. His response content reflects a high degree of self-confidence and the ability to deal with life tasks. He considers himself in good health and does not complain of somatic difficulties.

He reports that his work situation in generally satisfactory. No significant negative work attitudes requiring treatment attention were noted in his item content.

INTERPERSONAL RELATIONS:
Quite outgoing and sociable, he has a strong need to be around others. He is gregarious and enjoys interpersonal attention.

AGNOSTIC CONDIDERATIONS:
This profile is within normal limits and no clinical diagnosis is provided.

NOTE: This MMPI-2 interpretation can serve as a useful source of hypotheses about clients. This report is based on objectively derived scale indexes and scale interpretations that have been developed in diverse groups of patients. The personality descriptions, inferences and recommendations contained herein need to be verified by other sources of clinical information since individual clients may not fully match the prototype. The information in this report should most appropriately be used by a trained, qualified test interpreter. The information contained in this report should be considered confidential.

ROBERT J. CHALEMIAN, M.D., P.A.
Telephone (201) 848-0088
301 Sicomac Avenue
Wycoff, New Jersey 07481

315 East 69th Street
New York, New York 10021

September 16, 1994

Grace T. Meyer
669 W. Westwood Ave
Rivervale, New Jersey 07675

Re: MICHAEL BELLESFIELD

Dear Ms. Meyer:

The following is an addendum to my original letter of July 10, 1994. The beginning and middle of this letter is the same as the original one; however, with the inclusion of Dr. Donald Skinner's report and conclusions, I have added a new summary and recommendations. Also included is the complete psychological test report of Dr. Skinner.

At both your and the above named individual's request, I conducted a psychiatric evaluation of Mr. Bellesfield, a 41 year old man who is involved in litigation against the Department of Youth and Family Services (DYFS). It is Mr. Bellesfield's assertion that there has been numerous instances of abuse of discretion on the part of personnel at DYFS as it has related toward Mr. Bellesfield's parental authority over hios current 13 year old son, that authority of which has been abrogated since January, 1994, at which time Eric, Mr. Bellesfield's son, was taken away and placed in foster care. The allegations of DYFS have centered around emotional and physical abuse at the hands of Mr. Bellesfield, all of which are faltly denied by Mr. Bellesfield. The history of DYFS involvement covers about 8 years, and revolve around "their (Local School. Board) attempt to place [Eric] in special ed". Mr. Bellesfield stated that he has never seem any reason to do so, and he has been battling the Board of Education ever since. He has felt that there has been a conspiracy against him because he has resisted to follow their

advice. In Decmber, 1992, Mr. Bellesfield filed a formal complaint against DYFS and the School, and "they took no action".

Pertinent history revealed that Mr. Bellesfield grew up in Warren County, one of three children. His parents apparently still live in Warren County, but Mr. Bellesfield has no contact with them. He stated "I decided to create a life of my own". He graduated from Phillipsburg Catholic High School in 1970, and atended Mercer County Community College for two years, receiving an A.A> degree in 1972. He then studied at several different colleges, but received no further degree.

With regard to Mr. Bellesfield's son, Eric, apparently his natural mother abandoned the family when Eric was 15 months old, and her wherabouts have never been known. Mr. Bellesfiled has been the sole custodian and guardian of Eric. He had been laid off in November, 1993, and he stated that there were more problems with his son since then. Mr. Bellesfield, however, did not percieve that the problems were of any sever intensity.

Pychiatrically, Mr. Bellesfield has been hospitalized on two separate occasions, first in Hawaii at Castle Medical Center in September, 1990, the second in New Jersey at St. Claire's Hospital in May, 1992. The diagnosis in 1992 was Brief Reactive Psychosis, but in 1990, there may have been some depressive elements with paranoia, with the final diagnosis being Major Depressive Disorder with psychotic features and suicidal ideation.

I had the following records at my perusal:

1) St. Claire's Riverside Discharge Summary dated 6/3/92
2) Court Report dated 3/25/94 Morris County Sup. Court
3) Discharge Summary, Castle Medical Center dated 9/17/90
4) Consultation Record Castle Medical Center dated 9/19/90
5) Psychological Test Report dated 7/30/92
6) Therapist Summary, Eric, dated 1/20/94
7) Michael Bellesfield's letter dated 2/7/94
8) Michael Bellesfield's letter dated 2/17/94
9) Ironia Elementary School report dated 2/11/92

10) Morristown Forensic Associates reports dated 3/2/93; 2/24/94

I saw Michael Bellesfield in my office on two occassions, each for approximately 45 minutes. Mental status revealed a tall, well dressed, cooperative man appearing his stated age. There was no evidence of a thinking disorder, and his speech was well modulated and goal oriented. He denied visual or auditory hallucinations, but did admit that in the past, when he was greatly stressed, he would have difficulty perceiving reality (as documented in both hospital summaries). He tended to overreact to stresses and interpret some as threatening when there may have been other opitons he did not consider. He admitted that this occassionally happens, that he had to work on them. He did not appear overtly delusional, however. He realized that the "system" he is fighting against is not inherently evil, but that they are not looking out fore the best interests of his child; and, as such, he feels compelled to proceed on this course of litigation. He denied depressions, but stated that he has gotten depressed in the past, and had suicidal ideation, but denied any active plan. He ststaed that his sleep and appetitie are adequate. He has had a several year history of chronic, mild depression, pri arily due to the stresses in his life, that of rearing a child alone, along with maintaining a full-time job. He is fully oriented, with immediate, recent, and remote memory intact. His concentration ability was intact, as he was able to do a series 7's quickly and accurately. His abstraction ability was good. His insight and judgement appeared to be non-psychotic, although at times his judgement was colored by suspiciousness, and a tendancy toward a paranoid stance (without overt breaks in reality).

Psychological Testing: On July 15 and 18, 1994, Mr. Bellesfield underwent psychological testing by Donald Skinner, PhD. Test administered were Clinical Interview, Draw-A-Person, Sixteen Personality Factor Questionaire, Clinical Analysis Questionaire, Thematic Apperception Test, and Rorschach Ink Blot Test. His report is appended to this report. Several pertinent observations are of interest: 1) "On the Rorschach...(he) produced 20 rich, hghly diferentiated, original, complex, and non-psychotic responses";

"Dynamically, he tends to approach the world in a suspicious manner but he tends to have a playful, sincere, almost needy side to him"; Conclusion: "Mr. Bellesfield is an extremely intelligent, resourceful, single parent, who has managed to raise a child despite some acute psychiatric hospitalizations and financial difficulties. This present evaluation indicated that he is currently stable, aware of his problems and has a healthy, clear vision of his parental responsiblity".

In summary, it is clear from a reasonable degree of medical probablitiy perspective that Mr. Bellesfield's psychiatric issues have been used inappropriately from the vantage point of the Division of Youth and Family Services. I can state this categorically because of the many and varied allegations of instability of Mr. Bellesfield, all of which are in the most general terms, and some of which are within the parameters of normal parenting authority (eg. letter of July 27, 1994, from Michael Shea, counsellor of Eric Bellesfield): "As you are aware Eric began therapy with this therapist to address the emotional and physical abuse that he experienced while in the care of his father..." This type of innuendo is reprehensible. Clearly Mr. Bellesfield had difficulties with maintaining appropriate authority over his son, but such classification of abuse subsumes and assumes severe imbalance on Mr. Bellesfield's part--which he does not have--or malevolent motives toward his son--which is not probable. Mr. Bellesfield does not have a psychotic disorder which renders hom and unfit parent.

It is my clinical opinion that Mr. Bellesfield should immediately be reunited with his son, and his parental authority be reinstated fully. Doing otherwise lacks wisdom and is believed to be detrimental to the present and future wellbeing of his son Eric.

Impression:

AXIS 1: Status Post Brief Reactive Psychosis Adjustment Disorder with Mixed Emotional Features

AXIX 2: Mixed Character Disorder, with Avoidant, Depressive and Paranoid Features.

AXIS 3: No diagnosis

AXIS 4: Stressors: Severe

AXIS 5: Functioning: 75

s / "Robt Chalemian"
Rob't J Chalemian,MD

DR. DONALD SKINNER
PSYCHOLOGIST
550 MAPLE AVE.
RIDGEWOOD, NJ 07450

September 27, 1994
Re: Eric Bellesfield

To Whom It May Concern:

The undersigned was recently presented with a copy of a letter written to Mr. Johnston [DYFS] by Mr. Shea, Psychotherapist, re: Eric Bellesfield.

The undersigned was alarmed by the shocking content matter and recommendations of this letter. The accusations were as follows: It was reported that Eric began therapy to address emotional and physical abuse he experienced while in the care of his father. It emphasized that Eric's therapy focusing on his adjusting to foster care and that he is currently experiencing behavioral problems, one of which includes lying. Finally, Mr. Bellesfiled is portrayed as an intrusive, controlling tyrant, who tells Eric what to say, think, and feel. The recommendations were that Eric must be protected and further visitation must be supervised.

As a clinical specialist in child, adolescent, and family therapy the undersigned is aware that it is the duty of both counselors and state institutions to protect the interests of a child. In the current climate of abuse and victimization, however, these concerns have in some cases blinded us to the real and best interest of the child.

First, the undersigned was not aware that Mr. Bellesfield has been found guilty of committing abusive actions against his son, yet he is being treated as a convicted and dangerous criminal.

Second, the undersigned conducted a complete psychological evaluation, in which he was assessed to be a competent and caring parent.

Third, even if the state strongly felt Mr. Bellesfield and his son required guidance and counseling, why does he continue to remain in foster care? Moreover, there are now reports of problems in the current foster home. Does that mean if it does not work out for Eric, he will be placed in another foster home or maybe a psychiatric institution? Certainly, we are all aware of the tragedy of a child lost in the state system which has so limited resources these days.

The undersigned seriously questions whether or not this case is therapeutically moving in the healthiest direction.

In contrast, the undersigned recommends that Mr. Bellesfield be granted full custody of Eric. Eric should be returned home immediately. It is further recommended that the resources expended to undermine should be instead utilized to support Mr. Bellesfield with respect to being a successful parent.

s "Donald Skinner"
Donald Skinner, Ph.D.

DS/kms

On a number of occassions I asked him questions about how he got along with his father, and he claimed that their relationship was quite good. I asked him as to why the State agencies were involved, and Eric immediately blamed the school stating: " The school called them in." I asked him directly as to whether his father had in any way abused or threatened him or overly punished him. Eric stated: " They want me to say that, but I told you the truth - my father is there for me."

His House-Tree-Person was very unusual. It was of a large temple-like church. Two spires and coluns dwarfed the figure who is coming up the stairs toward the front. Gargoyles are perched on the roof. Both the sun and the moon are in the picture. The Tree is both in leaf and partially dead with a large hole. This was described as a total conception in which the human figure "is waiting for church to begin". Thre is both joy and sadness, awe and mystery.

The overall impression in this examination which lasted more than one hour was conducted privately with only the child, was that Eric is a very intelligent chid who has superior perceptual abilities. He has a creative and imaginative mind and appears to be a very bright child who is not being handled properly in school. I can find no evidence of active psychiatric symtomatology such as depression, phobias or anxiety. The waters run deep, however, in this child and he needs active sponsorship and an endorsement in a therapeutic relationship. From the facts that I have at my disposal, I think it is counterproductive to be continually asking this child as to whether he is being abused at home. This examination does not support that contention.

I trust that this summary of my examination of Eric is helpful for your purposes.

Sincerely,

JDG:pam

s / " Jerome Goodman "
Jerome D. Goodman, MD

Supreme Court, U.S.
FILED
JUN 5 1998
CLERK

No. 97-1808

In The

Supreme Court of the United States

October Term, 1997

MICHAEL BELLESFIELD,

Petitioner,

v.

ATTORNEY GENERAL OF THE STATE OF NEW JERSEY, et al.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals, Third Circuit

BRIEF ON BEHALF OF MORRIS HILLS REGIONAL BOARD OF EDUCATION, CHRIS BRADLEY AND ROBERT STORM IN OPPOSITION

PURCELL, RIES, SHANNON, MULCAHY & O'NEILL
1 Pluckemin Way,
P.O. Box 754
Bedminster, NJ 07921
(908) 658-3800

WILLIAM P. RIES
Counsel of Record
PAUL G. WITKO
On the Brief

SCHENCK, PRICE, SMITH & KING
Co-Counsel of Record
10 Washington Street
Morristown, NJ 07963
(973) 539-1000

SIDNEY A. SAYOVITZ
Of Counsel
JOANNE BUTLER
On the Brief

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTION PRESENTED

Did the federal courts below properly apply the *Younger* Abstention Doctrine where:

a. There is an ongoing state proceeding involving the same set of operative facts as here;

b. That state proceeding focuses on child welfare, traditionally an area of state concern; and

c. Petitioner had the opportunity to raise any constitutional issues in that state proceeding, yet chose not to do so?

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BRIEF ON BEHALF OF MORRIS HILLS REGIONAL BOARD OF EDUCATION, MR. BRADLEY AND MR. STORM IN OPPOSITION

Respondents, Morris Hills Regional Board of Education, Chris Bradley and Robert Storm, respectfully request that this Court deny the Petition for a Writ of Certiorari filed by petitioner, Michael Bellesfield, seeking review of a decision by the United States Court of Appeals, Third Circuit, entered February 6, 1998.

COUNTERSTATEMENT OF THE CASE

I. Background

Eric Bellesfield is the minor son of Petitioner Michael Bellesfield. The genesis of this federal court action emanates from numerous investigations by the New Jersey Division of Youth and Family Services ("DYFS") into allegations that Michael Bellesfield had abused Eric Bellesfield.

In February 1987, DYFS investigated reports that Michael Bellesfield left Eric Bellesfield (then a young boy) unsupervised.[1] Michael Bellesfield thereafter obtained a babysitter and DYFS intervention ceased. (App. 13).

In March 1992, Eric Bellesfield ran away from home and reported that Michael Bellesfield had hit him several

[1] Respondent will cite to the materials contained within its appendix as (App. ___).

times.[2] (A40). DYFS did not seek protective custody of Eric Bellesfield at that time but, instead, recommended that Michael Bellesfield and Eric Bellesfield seek therapy. (A40).

On April 10, 1992, Eric Bellesfield again reported being hit by Michael Bellesfield. (A40). DYFS, however, again did not seek protective custody of Eric Bellesfield. (A40).

In May 1992, Michael Bellesfield voluntarily entered a hospital for psychiatric treatment. (A40). A month later, a psychiatrist examined Eric Bellesfield and concluded that he needed both " 'active sponsorship and an endorsement in a therapeutic relationship.' " (A40).

On August 16, 1993, Eric Bellesfield reported to the Massachusetts Department of Social Services that he was again hit by Michael Bellesfield. (A40). Michael Bellesfield refused to undergo therapy and would not accept a counseling referral for his son. (A40).

On January 8, 1994, Eric Bellesfield reported to DYFS that Michael Bellesfield had dragged him from a convenience store and struck him across the chest. (A40). At that time, Michael Bellesfield signed a voluntary placement agreement, placing Eric Bellesfield in DYFS custody. (A40-41).

On January 14, 1994, DYFS initiated an action in the Superior Court of New Jersey, Chancery Division, seeking an Order placing Eric Bellesfield in its protective

---

[2] Respondent will cite to the materials contained within Michael Bellesfield's appendix as (A ___).

custody. (A39). Among other things, DYFS maintained that Michael Bellesfield had abused Eric Bellesfield. See *N.J.S.A.* 9:6-8.21(c); (A40).

Following the commencement of that action, DYFS took Eric Bellesfield into protective custody. (A41). Thereafter, contact between Michael Bellesfield and Eric Bellesfield was limited to supervised church and counseling visits arranged through DYFS. (A41). Michael Bellesfield was ordered to obtain psychological evaluations, provide past psychological information, and provide information about other family members. (A41).

In July 1994, Michael Bellesfield sought an immediate change of custody, claiming that the foster parents who had been caring for Eric Bellesfield had physically disciplined him. (A41). Michael Bellesfield sued the foster family and thereafter improperly attempted to communicate with them. (A41).

Michael Bellesfield's subsequent actions led to restrictions on church and counseling visitation. (A41). On one occasion, Michael Bellesfield handed a note to Eric Bellesfield during a church service. (A41). That note requested that Eric Bellesfield copy a letter prepared by Michael Bellesfield which stated, in effect, that his foster parents had hit him and that he wanted to go home to Michael Bellesfield. (A41-42).

A trial of the custody issue took place on July 18, 1995 and July 19, 1995 in New Jersey Superior Court. (A39). The Court interviewed Eric Bellesfield on August 4, 1995 and determined that he had been abused by Michael Bellesfield. (A45). The Court further concluded

that Michael Bellesfield posed a high risk to abuse Eric Bellesfield. (A45).

Since the issuance of the August 22, 1995 decision, the Court entered several additional orders requiring that Eric Bellesfield remain in DYFS protective custody and directing Michael Bellesfield to enter into therapy.

The Superior Court action remains pending.

II. Proceedings Below

Michael Bellesfield filed his initial complaint in the United States District, District of New Jersey on March 11, 1997. The Complaint purported to be a combination habeas corpus petition, see 28 U.S.C. § 2255, and a civil rights complaint. See 42 U.S.C. § 1983.

On March 18, 1997, the District Court entered an order noting several deficiencies in the Complaint. Specifically, the Complaint did not comply with Fed. R. Civ. P. 8(a), did not state a cause of action for habeas corpus relief and sought to interrupt ongoing State Judicial proceedings. (App. 1-4). The Court gave Michael Bellesfield leave to file an amended pleading that corrected the noted deficiencies. (App. 4).

Also on March 18, 1997, Michael Bellesfield filed an emergent order to show cause seeking a Federal Court injunction to prevent a summary hearing scheduled to be held in the Superior Court regarding the parental rights of Michael Bellesfield. On March 26, 1997, the Court denied the relief sought in the Michael Bellesfield order to show cause, because Michael Bellesfield had not yet complied with the March 18, 1997 order, and because the

"summary hearing" that Michael Bellesfield sought to enjoin could be adjourned at the request of Michael Bellesfield. (App. 5-6).

On March 26, 1997, Michael Bellesfield filed an amended complaint seeking immediate release of Eric Bellesfield from foster care, damages in the amount of $3 million, and a temporary injunction preventing New Jersey from continuing the lower court action. (App. 7-39). Michael Bellesfield sought injunctive relief via motion filed on April 23, 1997.

On April 23, 1997, Judge Lechner issued an order to show cause why the Federal District Court should not abstain from exercising jurisdiction over the matter. (A35-38). The order to show cause also denied the relief sought in Michael Bellesfield's motion, because he had failed to provide proof that the motion had been served upon defendants and because it was filed prior to the service of the amended complaint. (A36-37).

On June 26, 1997, Judge Lechner issued a letter opinion and order concluding that the court would abstain from exercising jurisdiction over the case. (A18). The court premised that conclusion on its application of the Abstention Doctrine developed in *Younger v. Harris*, 401 U.S. 37, 1971 and its progeny. (A18).

The Doctrine of Abstention prevents federal courts from interfering with pending state court proceedings and is applied in a particular case only after analyzing a three-part test. (A26). The district court here reviewed each part of the test and concluded that abstention was proper. (A27-31).

The first criteria addresses whether there is an ongoing proceeding in the state court system involving the same issues and parties as in federal court. (A27). In this case, the federal court action concerned the identical operative facts as in state court, *i.e.*, the custody of Eric Bellesfield and the parental rights of Michael Bellesfield. (A27).

The district court further concluded that the second prong, *i.e.*, whether the state proceeding implicates important state interests, had been met, as well. Citing the history of decisions supporting the notion that family/child welfare is traditionally a strong state interest, coupled with the need to maintain the integrity of the state court system, the district court found that the second factor had been satisfied here. (A28-30).

The third and final criteria focuses on whether the plaintiff had an opportunity to litigate any constitutional claims in state court. The district court held that plaintiff could have raised various constitutional challenges in state court, but failed to do so. (A30-31).

Finally, the district court concluded that Michael Bellesfield had failed to establish "bad faith" by the various state agencies in the handling of his son's custody case, or that extraordinary circumstances existed to bring the federal action outside the scope of *Younger*. Specifically, the court held that Michael Bellesfield had provided "only conclusory allegations and vague references to a conspiracy involving the Attorney General, DYFS, various schools and the Public Defender." (A32).

Michael Bellesfield thereafter appealed that ruling to the United States Court of Appeals, Third Circuit. On

February 6, 1998, Circuit Judge Ruggiero J. Aldiscert issued a memorandum opinion affirming the judgment of the District Court. (A4-7). The Circuit Court agreed with the District Court's analysis of the *Younger* Abstention Doctrine and was "satisfied with the lower court's reasoning." (A6).

SUMMARY OF ARGUMENT

The District Court and the Circuit Court of Appeals properly analyzed the *Younger* Abstention Doctrine, as well as the three-part test set forth in *Middlesex County Ethics Comm. v. Garden State Bar Ass'n*, 459 U.S. 423 (1982). Plaintiff admits that there is an ongoing proceeding in state court involving the same parties and issues. New Jersey's interest in family matters is sufficiently strong to require abstention. Finally, Michael Bellesfield had a forum (the pending New Jersey state court action) to seek redress for his constitutional and alleged other grievances, yet chose not to utilize that forum.

Michael Bellesfield overlooks the clear applicability of the Doctrine of Abstention and provides no facts or case law in support of any exception to that doctrine. Petitioner's call for modification of *Younger*, based on the facts on this case, should not be heard. The claims of state-sponsored kidnapping, official misconduct, and unlawful detention are premised only on petitioner's vague, conclusory and unsupported statements not borne by the record in this matter. To the contrary, petitioner has a forum in state court, chose to ignore visitation rules, and ultimately was found to have abused his son.

Despite those findings, and even though he did not raise any constitutional challenges in state court, Michael Bellesfield now asks this Court to intervene in his pending state court action to "perhaps prevent an all out rebellion on the part of millions of parents." Such a bald claim to overturn a fundamental maxim of federal jurisprudence should not be granted further review. Because the decisions of the District Court and Court of Appeals are well-reasoned and soundly based, the petition for certiorari should be denied.

ARGUMENT

THE COURTS BELOW CORRECTLY CONCLUDED THAT THE FEDERAL COURTS SHOULD ABSTAIN FROM EXERCISING JURISDICTION OVER THIS MATTER

1. The *Younger* Doctrine of Abstention

The original and amended complaints filed by Michael Bellesfield contain allegations that various constitutional and civil rights have been violated. Plaintiff, therefore, appears to premise jurisdiction for this matter based on 28 U.S.C. § 1331. The sole question raised by this appeal, then, concerns whether the courts below properly determined that the federal judiciary should decline exercising jurisdiction over this case based on the *Younger* Abstention Doctrine.

In *Younger v. Harris*, 401 U.S. 37 (1971), Harris was indicted on various criminal offenses in California state

court. Harris thereafter filed a complaint in federal district court, seeking to enjoin Younger (the California District Attorney) from prosecuting him. Specifically, Harris alleged that the prosecution inhibited the exercise of his rights under the First and Fourteenth Amendments.

The Supreme Court recognized that Harris' request for an injunction, if granted, would undermine long-standing principles of comity and federalism:

> *[Congress has historically] manifested a desire to permit state courts to try state cases free from interference by federal courts.*
>
> * * *
>
> The normal thing to do when federal courts are asked to enjoin pending proceedings in state courts is not to issue such injunctions.
>
> [*Id.* at 43, 45 (emphasis added).]

As a result, the Court's ruling became known as the *Younger* Abstention Doctrine ("the Doctrine"), which prevents federal courts from interfering with pending state court proceedings, even when there is an allegation of a constitutional violation. *Id.* at 43-44. The Doctrine now also applies to pending state court civil actions, which raise important state interests and where the claimant has a forum to raise the claims for which redress is sought in the federal system. *See, e.g., New Orleans Pub. Serv. Inc. v. Council of New Orleans*, 491 U.S. 350 (1989); *Juidice v. Vail*, 430 U.S. 327, 334 (1977); *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 604, *reh'g denied*, 421 U.S. 921 (1975); *see also Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 10-14 (1987); *Ohio Civil Rights Comm'n v. Dayton Christian Schools, Inc.*, 477 U.S.

619, 627-29 (1986); *Middlesex County Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 431-32 (1982); *Moore v. Sims*, 442 U.S. 415, 423 (1979); *FOCUS v. Allegheny County Court of Common Pleas*, 75 F.3d 834, 843 (3d Cir. 1996); *Marks v. Stinson*, 19 F.3d 873, 883 (3d Cir. 1993).

Federal courts developed the Doctrine of Abstention out of deference to principles of comity and federalism. *Quackenbush v. Allstate Insurance Co.*, 116 S. Ct. 1712, 1724 (1996) (citing *Younger, supra*, 401 U.S. at 44-45). As this Court observed in *New Orleans Public Service:*

> For *Younger* purposes, the State's trials and appeals process is treated as a unitary system, and for a [F]ederal court to disrupt its integrity by intervening in mid-process would demonstrate a lack of respect for the State as sovereign.
>
> [491 U.S. at 369].

The Supreme Court in *New Orleans* established a three-part test in order to apply the Doctrine on a case-by-case basis. First, there must be a pending state proceeding that is judicial in nature. *Id.* at 352. Next, the state proceedings must raise issues of important interest. Finally, plaintiff must be afforded an opportunity to raise any constitutional issues in the state forum. *Ibid.* A review of each factor in this case makes clear that the District Court decision was proper and should be affirmed.

A. Pending State Proceeding

As to the first part of the test, even plaintiff admits that his Complaint seeks the intervention of the Federal Court during the course of a state proceeding, contrary to

doctrines of federalism and abstention. The pending state action involves the custody of Eric Bellesfield, the same set of operative facts as here. The courts below properly reached that very conclusion. Clearly, then, the first requirement for abstention under *Younger* has been satisfied.

B. Important State Interests

The second criteria of *Younger* has been met, as well. This prong requires abstention if the state proceedings implicate important state interests. The important state issue still being litigated in state court of *Younger* here focuses on child/family welfare. Questions of family relations (specifically, custody) have historically been an area of state, not federal, concern. *See, e.g., Moore v. Sims*, 442 U.S. 415, 435 (1979); *Morrow v. Winslow*, 94 F.3d 1386 (Ct. App. Okl. 1996) (recognizing unique federal interest in welfare of Indian children, but concluding that tradition of state interest in family relationship was sufficiently strong to apply the Doctrine).

The Court in *Morrow* also recognized another important state interest at issue here that goes hand-in-hand with that of family relations. The state has an interest in ensuring that all family/child welfare matters proceed in an orderly fashion so as to protect the interests of the child. *Ibid.* Allowing plaintiffs such as Michael Bellesfield an opportunity to re-litigate issues of child custody implicate important principles of comity and federalism. *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 13 (1987). In addition, intervention by the federal courts here would

potentially preempt years of fact-finding regarding the appropriate care for Eric Bellesfield.

Accordingly, the state's interest in adjudicating issues of child welfare, coupled with long-standing maxims of comity and federalism, result in the inescapable conclusion that the second prong in *Younger* has been met here.

C. Opportunity to Raise Issues in State Court

Finally, the Doctrine of Abstention can be applied so long as plaintiff has an adequate opportunity to raise constitutional issues in state court. *Port Authority PBA v. Port Authority of New York and New Jersey*, 973 F.2d 169, 173 (3d Cir. 1992). Although plaintiff may have been dissatisfied with the decisions reached thus far by the trial courts in the New Jersey state action, plaintiff in fact, had the opportunity to raise any constitutional issues in that forum or via appeal. His failure to do so should not afford him a second opportunity in a different forum.

Bellesfield also claims the presence of bad faith or extraordinary circumstances warrants reversal of the opinions below. The Court in *Younger* recognized that abstention is inappropriate if:

> A) the state court proceedings are pursued in bad faith to harass the federal claimant; or
>
> B) extraordinary circumstances exist, such as where a challenged statute flagrantly violates express constitutional prohibitions, and where abstention would cause irreparable injury.
>
> [*Port Authority, supra*, 973 F.2d at 176]

Petitioner here asserts *claims* of bad faith, as well as *allegations* that extraordinary circumstances exist here. Those claims, focusing on purported harassment of the Bellesfield family by DYFS and other state agencies, are supported by nothing more than conclusory, bald allegations. The courts below properly recognized that exceptions to *Younger* are rare, and that more than mere conclusory allegations is necessary. (A31). Thus, Michael Bellesfield's "proofs" in the regard are patently deficient, and petitioner has failed to establish the existence of either bad faith or extraordinary circumstances.

Accordingly, the Doctrine of Abstention should apply here.

CONCLUSION

The Courts below properly applied the *Younger* Abstention Doctrine to this case. Petitioner concedes that state proceedings are ongoing, that custody is an important state issue, and that he failed to contest constitutional issues in state court. Moreover, petitioner cannot establish, beyond merely making conclusory allegations, that bad faith or exceptional circumstances exist here. Accordingly, there is no need for intervention by the federal courts in this matter and, therefore, respondents Morris Hills Regional School District, Robert Storm and

Chris Bradley respectfully request that the petition for a writ of certiorari be denied.

Respectfully submitted,

PURCELL, RIES, SHANNON, MULCAHY & O'NEILL
WILLIAM P. RIES, ESQ.
Counsel of Record
PAUL G. WITKO, ESQ.
On the Brief

SCHENCK, PRICE, SMITH & KING
SIDNEY A. SAYOVITZ, ESQ.
Of Record
JOANNE L. BUTLER, ESQ.
On the Brief

Dated: June 5, 1998

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

MICHAEL BELLESFIELD, ERIC BELLESFIELD, a minor, Plaintiffs, v. ATTORNEY GENERAL, STATE OF NEW JERSEY, PETER VERNIERO, in official capacity only, PETER ALVINO, individually and in official capacity, NEW JERSEY DEPT. OF HUMAN SERVICES WILLIAM WALDMAN, DIRECTOR, in official capacity only, DIVISION OF YOUTH AND FAMILY SERVICES, JAMES VALENTINE, DAVID JOHNSTON, individually and in official capacities, FAMILY ENRICHMENT PROGRAM, MORRISTOWN FORENSIC ASSOCIATES MICHAEL SHEA, MICHAEL FIORE, individually and in official capacities, MORRIS COUNTY PUBLIC DEFENDER'S OFFICE, JOEL HARRIS, individually and in official capacity, RUDOLF TWNSP. SCHOOL SYSTEM, CARMINE GAITO, NORMA MIELE, SUSAN AND ERIC HERSCHMAN, individually and in official capacities, MORRIS HILLS SCHOOL SYSTEM, MR. BRADLEY, MR. STORM, individually and in official capacities, CHILD PLACEMENT REVIEW BOARD, SUZANNE WARREN, individually and in official capacity, Defendants.	CIVIL ACTION NO. 97-1181 (AJL) ORDER (Entered 3-18-97)

This matter having come before the court upon the complaint (the "Complaint") of *pro se* plaintiffs Michael Bellesfield and Eric Bellesfield, a minor (collectively, the "Plaintiffs"), and it appearing

- Plaintiffs' purported *habeas corpus* petition fails to state a cause of action because Eric Bellesfield is in foster care, Complaint at 9, and is, therefore, not a prisoner nor does he suffer any restrictions imposed by State criminal justice system. *Lehman v. Lycoming County Children's Services Agency*, 458 U.S. 502, 511 (1982). Accordingly, it appears appropriate to dismiss the Complaint to the extent it seeks *habeas corpus* relief.

- The Complaint seeks to disrupt ongoing State judicial proceedings. *See* Complaint at 37. It appears that to grant the relief sought in the Complaint would disrupt the integrity of the State judicial proceedings and "would demonstrate a lack of respect for the State as a sovereign." *New Orleans Public Service, Inc. v. Council of City of New Orleans*, 491 U.S. 350, 369 (1989); *see Younger v. Harris*, 401 U.S. 37 (1971). Accordingly, it appears appropriate to dismiss the Complaint, as it is now drafted.

- Federal Rule of Civil Procedure 8(a) ("Rule 8(a)") requires that a pleading "shall contain . . . a short and plain statement of the claim showing that the pleader is entitled to relief." Fed.R.Civ.P. 8(a). The purpose of Rule 8(a) is to "give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." *Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit*, 507 U.S. 163, 168 (1993) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)); *see also In re Westinghouse Securities Litigation*, 90 F.3d 696, 702 (3d Cir. 1996); *Barnhart v. Compugraphic Corp.*, 936 F.2d 131, 135 & n.7 (3d Cir. 1991); *Salahuddin v. Cuomo*,

861 F.2d 40, 42 (2nd Cir. 1988) (explaining purpose of rule is to "give the adverse party fair notice of the claim asserted so as to enable him [or her] to answer and prepare for trial"); *Mayor and Council of Borough of Rockaway v. Klockner & Klockner,* 811 F.Supp. 1039, 1061 (D.N.J. 1993). Courts have discretion to dismiss a complaint, *sua sponte,* where "the complaint is so confused, ambiguous, vague, or otherwise unintelligible that its true substance, if any, is well disguised." *Salahuddin,* 861 F.2d at 42 (holding court has power, on its own initiative, to dismiss the complaint when it does not comply with requirements of Rule 8); *see also Frazier v. Southeastern Pennsylvania Transp. Auth.,* 785 F.2d 65, 68 (3d Cir. 1986); *Bryson v. Brand Insulations, Inc.,* 621 F.2d 556, 559 (3d Cir. 1980) (a court may dismiss a complaint on its own initiative if the complaint affords a sufficient basis for the court's action); *Wheeler v. Nieves,* 762 F.Supp. 617, 627 (D.N.J. 1991); *Panek v. Bogucz,* 718 F.Supp. 1228, 1229 (D.N.J. 1989); *King v. Fayette County,* 92 F.R.D. 457, 458 (W.D.Pa. 1981); *Brown v. Califano,* 75 F.R.D. 497, 499 (D.D.C. 1977). Where a complaint does not comply with Rule 8(a), however, a plaintiff is generally given leave to file an amended pleading that conforms to the requirements of Rule 8. *Salahuddin,* 861 F.2d at 42.

• In the instant matter, the Complaint consists of thirty-nine pages of factual and legal argument. The Plaintiffs have additionally submitted twenty-three exhibits in support of the Complaint. The paragraphs of the Complaint are not numbered. The Complaint further purports to be a combination of a *habeas corpus* petition and a civil rights complaint. *See* Complaint at 2. Plaintiffs allege violations of the "First, Fourth, Fifth, Sixth, Seventh, Ninth, Thirteenth, Fourteenth and Fifteenth Amendments" and allege numerous causes of action including conspiracy to violate civil rights, denial of due process, abuse of power, abuse of

process, "[t]reatment [m]al-practice" (sic), "[u]ltra [v]ires [s]ubstantiation [d]efamation," libel/slander and alienation of affection. Complaint at 1-2. Plaintiffs' claims are alleged in a disjointed and vague manner and the Complaint is unnecessarily confusing. The Complaint, therefore, fails to provide fair notice to Defendants of the claims asserted by Plaintiffs.

and for good cause shown,

IT IS, on this 17th day of March, 1997,

ORDERED, that the Complaint will be dismissed pursuant to Rule 8(a) unless an amended complaint is filed as permitted by this order, and it is further

ORDERED, that Plaintiffs are granted leave to file, within fifteen (15) days of the date of this order, an amended pleading which conforms with the requirements of Rule 8(a) and addresses the other issues raised in this Order, and it is further

ORDERED, that should Plaintiffs fail to respond to this Order, as directed, the Complaint will be dismissed for the reasons stated, and it is further

ORDERED, oral argument will not be heard; the decision will be based upon any written submissions received, as permitted herein.

/s/ Alfred J. Lechner, Jr.
ALFRED J. LECHNER, JR., U.S.D.J.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

MICHAEL BELLESFIELD, ERIC BELLESFIELD, a minor, Plaintiffs, v. ATTORNEY GENERAL, STATE OF NEW JERSEY, PETER VERNIERO, in official capacity only, PETER ALVINO, individually and in official capacity, NEW JERSEY DEPT. OF HUMAN SERVICES WILLIAM WALDMAN, DIRECTOR, in official capacity only, DIVISION OF YOUTH AND FAMILY SERVICES, JAMES VALENTINE, DAVID JOHNSTON, individually and in official capacities, FAMILY ENRICHMENT PROGRAM, MORRISTOWN FORENSIC ASSOCIATES MICHAEL SHEA, MICHAEL FIORE, individually and in official capacities, MORRIS COUNTY PUBLIC DEFENDER'S OFFICE, JOEL HARRIS, individually and in official capacity, RUDOLF TWNSP. SCHOOL SYSTEM, CARMINE GAITO, NORMA MIELE, SUSAN AND ERIC HERSCHMAN, individually and in official capacities, MORRIS HILLS SCHOOL SYSTEM, MR. BRADLEY, MR. STORM, individually and in official capacities, CHILD PLACEMENT REVIEW BOARD, SUZANNE WARREN, individually and in official capacity, Defendants.	CIVIL ACTION NO. 97-1181 (AJL) ORDER (Entered 3-26-97)

This matter having come before the court upon the "Emergent Order to Show Cause" (the "Order to Show Cause"), filed 26 March 1997, and it appearing a complaint (the "Complaint") was filed in the instant action, on 11 March 1997, by *pro se* plaintiffs Michael Bellesfield and Eric Bellesfield, a minor (collectively, the "Plaintiffs"), and an order having been filed in the instant action on 18 March 1997 (the "18 March 1997 Order"), and the 18 March 1997 Order having set forth the various deficiencies of the Complaint and having given Plaintiffs the opportunity to file an amended complaint which addresses the deficiencies, and it appearing Plaintiffs have not yet filed an amended complaint, and it further appearing Plaintiffs assert the Order to Show Cause must be addressed on an emergent basis because a summary hearing before Hon. Stephen F. Smith, Jr., J.S.C., to address plaintiff Michael Bellesfield's parental rights, has been scheduled for 1 April 1997, and it appearing Plaintiffs may request an adjournment and "a new date can be set in [c]ourt on April 1, 1997," Certification of Michael Bellesfield in Support of Emergent Order to Show Cause, dated 17 March 1997, Exh. E, and it appearing, therefore, the Order to Show Cause need not be considered on an emergent basis, and for the reasons set forth in the 18 March 1997 Order, and for good cause shown,

IT IS, on this 26th day of March, 1997,

ORDERED, that the relief sought by the Order to Show Cause is denied.

/s/ Alfred J. Lechner, Jr.
ALFRED J. LECHNER, JR., U.S.D.J.

Michael Bellesfield, pro se
PO Box 112
Plainsboro, NJ 08536
609-716-0616

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

Michael Bellesfield Eric Bellesfield a minor Plaintiffs, vs. Attorney General, State of New Jersey, Peer Verniero in official capacity only, Peter Alvino, individual and official capacity. New Jersey Dept. of Human Services William Waldman, Director, in Official capacity only. Division of Youth and Family Services, James Valentine, David Johnston, individually and in official capacities. Family Enrichment Program, Morristown Forensic Associates Michael Shea, Michael Fiore individually and in official capacities. Morris County Public Defender's Office, Joel Harris individually and in official capacity.	CASE #97-1181 (AJL, Jr.) AMENDED CIVIL COMPLAINT CONSPIRACY TO VIOLATE CIVIL RIGHTS Denial of Due Process Abuse of Power Abuse of Process Treatment Mal-practice Ultra Vires Substantiation Defamation, Libel/ Slander Alienation of affection Invasion of Privacy Intentional Infliction of Emotional Distress JURY DEMAND

Randolph Twnsp. School System, Carmine Gaito, Norma Miele, Susan and Eric Herschman individually and in official capacities.

Morris Hills School System, Mr. Bradley, Mr. Storm, individually, and in official capacities.

Child Placement Review Board, Suzanne Warren, individually and in official capacity.

Defendants.

Michael Bellesfield, and on behalf of his minor son Eric Bellesfield, residents of of [sic] the State of New Jersey by way of Complaint, say;

JURISDICTION

1. This is a civil rights action for damages, declaratory judgement and injunctive relief to redress the deprivation under color of law, of rights served by the First, Fourth, Fifth, Sixth, Seventh, Ninth, Thirteenth, Fourteenth and Fifteen Amendments to the United States Constitution, and in violation of Title 42 USC Sections 1983 and 12131 et. seq. These are actions taken, under color of State Law, by State Agencies and are also violative of the Constitution of the State of New Jersey and of its statutory provisions and rules. This Court has jurisdiction pursuant to 42 USC Section 1983. Plaintiffs have been deprived of Constitutional Rights in violation of both substantive and

procedural due process safeguards, accorded all Constitutionally protected rights. Venue is pursuant to 28 USC Section 1391, as this is the district wherein plaintiffs reside and the claim arose. The amount in controversy, excluding interest and costs, exceeds $100,000.00.

2. Although this Complaint does seek the intervention of the Federal Court during the course of a state proceeding, contrary to doctrines of federalism and abstention, it is submitted that Federal intervention is not only justified, but absolutely necessary in order to prevent a blatant and purposeful violation of fundamental Constitutional rights and protections with particularly grave consequences which will result in the erroneous termination of parental rights and irreparable damage to this family. Additionally the actions of the State have been taken in bad faith, with a history of extraordinary circumstances and harassment so as to require the Federal Court to intervene to vindicate Constitutional violations in State Court, when by reason of passion or prejudice a full and fair hearing cannot be had in the State Court and the imminent and irrevocable damage which will befall this family if the Court does not do so. Under these extraordinary circumstances plaintiffs should have their opportunity to be heard in a Federal Forum.

PARTIES

3. a. Plaintiffs Michael Bellesfield and his natural son, Eric, are residents of the State of New Jersey, whose Constitutional rights have been and continue to be violated by the State of New Jersey and the sanctity of their

family, without due cause and in bad faith. They have been denied due process and equal protection both substantive and procedural.

b. Defendant Peter Verniero, Attorney General for the Department of Law and Public Safety for the State of New Jersey, the body politic in whose name all actions have been taken, and was at all times relevant in official capacity.

c. Defendant William Waldman is the Director of the New Jersey Department of Human Services and is responsible for the supervision of the Division of Youth and Family Services and was at all times relevant in official capacity.

d. Defendants James Valentine and David Johnston are employees of the Division of Youth and Family Services, (hereinafter DYFS) and were at all times relevant individually and in official capacities.

e. Defendants Michael Fiore and Michael Shea are employees of the DYFS contracted agencies, the Family Enrichment Center and Morristown Forensic Associate and were at all times relevant individually and in official capacities.

f. Defendant Joel Harris is an employee of the New Jersey Public Defenders Office of Morris County and was all times relevant individually and in official capacity.

g. Defendants Carmine Gaito, Norma Neile, Susan and Eric Hershman are employees of the Randolph Township New Jersey School System were at all times relevant individually and in their official capacities.

h. Defendants Bradley and Storm are employees of the Morris Knolls New Jersey School System and were at all times relevant individually and in their official capacities.

i. Defendant Suzanne Warren is an employee of the Child Placement Review Board which is also within the Department of Human Services and was at all relevant individually and in official capacity.

WRONGFUL CONDUCT

4. Upon information and belief, the defendants named herein, have willfully engaged in a conspiracy consisting of a pattern of escalating intrusion into the life of this family, until they have finally succeeded in effectively terminating the father's right of access to his son. These actions were taken under color of State Law and accomplished through abuse of their discretionary power and process and by either violating applicable State Law, or in the alternative, using State Law which is unconstitutionally vague so as to permit them to destroy the sanctity of this and other families, by violating the most fundamental of liberty and property rights.

5. Generically, it is submitted that this conduct on the part of DYFS and its affiliate and contracted agencies named herein, has been a systemic pattern for at least a decade using heavy handed "Gestapo" like tactics, DYFS has followed the same custom and practice for over a decade and the same scenario of insidious and progressive escalation of a charge of abuse, which is perpetuated by the agency itself. This custom and practice is a bureaucratic process through which DYFS, with the aid of their

contracted agencies, begins with intervention by means of a "Voluntary Placement Agreement," or other minimal intervention, and then engage in a step by step escalation of their intervention, using their experts to validate their requests for same, which then progresses to more and more intrusive intervention leading toward the end of permanent State custody and/or termination of parental rights.

6. This is accomplished through a series of complex actions and then using each preceding episode to justify each successive one which eventually is carried by its own momentum which is more fully explained infra. This same scenario occurs with hundreds of families in the State of New Jersey each year, wherein DYFS engages in willful and pre-meditated violations of Constitutional safeguards and parental rights, to illegally take children from their natural parents without due cause, usually to justify their own existence and funding and/or targeting those parents who do not immediately succumb to their authority and that in doing so, DYFS is violating their own mission statement which includes due regard for the rights of parents and a commitment to keeping natural families intact whenever possible.

7. Such actions are taken under the guise of compelling state interests, but are really unwarranted intrusions and taken in wanton and reckless disregard for the welfare of those people whom they are supposed to be protecting, or in the alternative, with such gross negligence and incompetence as to defy comprehension. These acts consist of abuse of power, discretion and process. Many of the tactics involve threats and intimidation and are so

egregious that they even reach into the private professional community, so that many doctors, psychologists and even lawyers will refuse to become involved in any case which opposes DYFS. This is an agency fraught with systemic corruption, drunk with power and out of control.

8. In this case, the State has wrongfully taken a child from the only parent he has ever known. These actions were taken in bad faith and part of a long term campaign of harassment against this family. A father is without his son and the son without his father, because of the discretionary acts of mid level State officials, who have wrongfully deprived them of the most precious of liberty rights, under color of state law by abusing the discretionary powers given them to protect these very persons, in a most egregious manner, repugnant to the very ideals of the Constitution they supposedly serve.

CAUSE OF ACTION

9. This case dates back to early 1987, when DYFS made the first intervention with the family. On February 2, 1987, when it first came to DYFS attention that petitioner was a single parent and was leaving his son Eric alone in the home for lack of an adequate baby-sitter. Mr. Bellesfield on his own had raised cared for and supported Eric, since he was an infant. At that time, DYFS did their first investigation and following the petitioner's procuring a baby-sitter, found the problem had been corrected and saw no need for any further intervention.

10. On March 8, 1992, there was an allegation of physical abuse, which was investigated by DYFS and found

again to be unsubstantiated. On April 10 that same year there was another DYFS investigation of physical abuse, which again was found to be unsubstantiated. On August 16, 1993 another report was made and the results of the DYFS investigation were the same. On January 8, 1994 another allegation was made and investigated. Apparently, virtually all these events were sparked by statements made by Eric Bellesfield, but no physical abuse was ever substantiated in any of them.

11. On that same date, however, because Eric did not want to go home, Michael Bellesfield ultimately signed a "voluntary placement agreement." In January, Mr. Bellesfield revoked that agreement. As a result, DYFS filed a petition for protective custody on January 14, 1994. Although several review hearings were held in 1994 and 1995, resulting in several Orders extending protective custody, and Eric was placed in foster care, a fact finding hearing was not held until July 18, 1995.

12. During two days of testimony before the Honorable Catherine Langlois, testimony was taken from a variety of DYFS workers and their experts. It was alleged by DYFS that Mr. Bellesfield violated NJSA 9:6-8, which defines an abused or neglected child and the court entered a finding that Eric Bellesfield fit the description of an abused or neglected child under the aforementioned statute. This finding was based not on any real incidents of abuse, but by the "risk assessment," done by Drs. Shea and Fiore as well as the DYFS workers. These "predictions" are at best, educated guesses, which are not an acceptable standard of treatment for any practicing professional, especially the doctors and certainly not a basis

for taking a child from a parent with no evidence of any substantiated abuse.

13. This testimony, however, resulted in an Order that Eric remain in DYFS custody indefinitely. At this point it is assumed that the minor is being held by the State against his own and his father's will. DYFS will not reveal the minor child's whereabouts to his father and will not confirm that the parents wishes with respect to Eric's religious upbringing are being adhered to and will not permit Mr. Bellesfield access to his child, except in a DYFS supervised setting. These defendants, under color of State law, conspired in bad faith to achieve these ends in violation of the most precious and sanctified of rights, privileges and safeguards of the United States Constitution.

COUNT ONE

Conspiracy to violate civil rights, malicious prosecution Abuse of power and process, Intentional infliction of emotional distress, Alienation of affection.

14. In the instant case, there was never any substantiation of abuse in any of the multitude of the DYFS interventions referenced, supra. Although at the time this Complaint was initially being drafted, there had not, as yet, been any formal petition to terminate parental rights filed. It is submitted that DYFS and the other defendants named herein, had already, for all practical purposes, conspired to do exactly that, through use of the tactics described. They have effectively already accomplished same, in that Michael Bellesfield has no say whatever in

any decisions regarding the care and custody of his natural son whom he raised as a single parent, since the child was an infant.

15. Indeed he does not know where his son is going to school or how he is doing academically. Mr. Bellesfield has no idea whether the child is attending the church of his choice, and has no input as to his religious upbringing, a clearly defined area, in which the State has no right to interfere. Indeed, at this very moment, he does not even know where his son is. This is effectively the termination of parental rights, no matter what it is called.

16. Further DYFS and the defendants named herein are following the long established custom and practice, using fraudulent means and abuse of power and process, to follow a classical and typical scenario of increasingly escalating intrusion into the family, from the initial wrongful usage of the so called "voluntarily" placement form, through several other legal stages, infra, toward the end of formally terminating of parental rights. This is especially true with respect to the misuse of the "voluntary" Placement Agreement is, by itself, sufficient to establish a prima facie case.

17. Upon information and belief it is submitted that both the general customs and practices of this agency and its affiliates and the end toward which they strive, is clearly the termination of parental rights and as discussed herein, infra, and that the instant case is a perfect illustration of tragic consequences of such a scenario and through official documentation will show that these

practices are systemic and violative of state law, or alternatively the statutes which govern these agencies are unconstitutionally vague and/or overbroad.

18. In each of the incidents described supra, there was never once a finding or substantiation of abuse or neglect, a fact which is not contested by the defendants. This is reflected in the State's records. In fact, in each of the instances of DYFS intervention, the workers themselves stated there was no indication of physical abuse, injuries, black and blue marks etc., as reflected in their own records. There was never once a substantiation of any abuse by these agencies. Yet they were able to take the minor child away from his natural parent and lawful guardian for almost two years without such charges ever substantiated, with arrogant disregard for the rights of this family.

19. In the January 8, 1994 incident, which triggered the current proceedings, the worker Defendant Valentine wrote in his Referral Response Report, "There is no injury . . . no imminent danger to Eric and no need for intervention," Then, because Eric said he did not want to go home, he urged Mr. Bellesfield to sign a "Voluntary Placement Agreement," through use of deceptive statements and heavy handed threats, intimidation and harassment.

20. Mr. Bellesfield was given the usual ultimatum by the worker, which causes the abuse of that agreement; that he could either sign the "voluntary" agreement and maintain custodial control over his son, or DYFS would get a Court Order to take him anyway. They were aided in this cause, since Eric as a normal rebellious teenager, who had

learned he could manipulate his father through statements to DYFS, as was reported to DYFS by his therapist Catherine Pollack and is also reflected in the DYFS records as well, wherein they state that such manipulation was taking place. Many teens have now learned this and have taken to doing so when they are angry or upset.

21. Clearly, however, when the long standing DYFS record has NEVER once substantiated any abuse, there is no good faith basis for any further State intrusion. It is obvious from the facts, that DYFS used their approach of escalating intervention to then finally employ the "if there is smoke there is fire" method of developing purely circumstantial evidence, which barely met the minimal threshold to petition the Court for "temporary placement," and only then with the aid of evaluations and reports from their contracted agents, including the Child Placement Review Board, Morristown Forensic Associates and the Family Enrichment Program. In order to accomplish this, all of these agencies crossed the line between cooperating with each other to conspiring with one another because Mr. Bellesfield tried to assert his most fundamental Constitutional rights, would not succumb to their authority and let them take his son for no good reason.

22. Upon information and belief, it was for this reason the defendants conspired with one another in order to continue the escalation process, to change the initial goal of the temporary placement which went from "voluntarily, placement" to "short term placement" to "long term placement," all within the course of two years and all of which was in opposition to the wishes of both the father and son, that Eric be allowed to go home. Few

cases could be more illustrative of the abuse of power and process in the use of this custom and practice of bureaucratic escalation.

23. The evidence of this progressive tangled web weaved by the defendants, with no just cause and despite the fact that, by their own admission, there was never any indication of abuse, is overwhelming, according to their own records. In fact, the only documented abuse which took place was while Eric was in foster care and was slapped across the face by the foster mother. But never once did any agency document abuse on the part of the natural father, nor was there any judicial determination of same. There was no basis for the continuing intrusion into this family, other than the bad faith and outrageous actions of the defendants.

24. The deprivations here, which occurred under color of state law are egregious in the extreme. These actions were willful, wanton and committed with reckless disregard or are, in the alternative, grossly negligent and/or incompetent. As a direct and proximate result of these actions the plaintiffs have been wrongfully deprived of their most fundamental rights, have had the sanctity of their family violated without cause. Both have experienced extreme emotional and psychological distress and have been damaged thereby.

25. There are aggravating circumstances here, of a most egregious nature, in that these are Sstate [sic] officials abusing their positions and power and acted knowingly and willfully to violate the most sanctified Constitutional rights of the plaintiffs with wanton and reckless disregard for their well being, for their own ulterior motives,

simply because Mr. Bellesfield would not succumb to their authority and because he fought for his rights as a parent.

WHEREFORE, the petitioners demand the immediate release of Eric Bellesfield from State Custody to his natural father and compensatory judgements against the defendants jointly and severally in an amount not less than $3,000,000.00 and such punitive damages as the Court deems appropriate, along with costs of this action.

Plaintiffs demand a trial by jury in this cause.

COUNT TWO

Conspiracy, Invasion of privacy, Treatment mal-practice [sic], Ultra Vires Substantiation, libel/slander, intentional infliction of emotional distress, abuse of power and process.

26. Plaintiffs reallege paragraphs 1-25 herein and incorporate same as if more fully set forth herein.

27. In addition to their own intrusions into this family, DYFS workers appeared at Eric's schools on numerous occasions, unannounced and without Mr. Bellesfield's knowledge and consent. They took Eric out of his classroom and interviewed him repeatedly, consistently pressuring him to make statements about being mis-treated [sic], which for the most part, he refused to do. They conspired with the defendants from the school systems named herein, to encourage these school officials to regularly interrogate Eric and on one occasion strip searched

the child, causing him extreme humiliation and embarrassment, as well as ostracism from his peers. Still there was no substantiation of abuse.

28. Notwithstanding, at each review hearing, the State requested extension of the continued temporary custody, until they finally built up to "more long term placement" in the hearing in June of 1995. This request was not based on any documented abuse, but was primarily based on the observation of DYFS workers and/or defendants Fiore and Shea, and the agencies for which they work, the Family Enrichment Center, and Morristown Forensic Associates, which are both contracted to do evaluations and/or psychological counseling for DYFS and are, in that sense, merely an extension of same.

29. This father and son were separated from each other for all this time, based solely on the "opinions" of the above named defendants, who without any evidence of abuse, enabled the State to take custody of the child anyway, by their "risk assessment" which is the same as forecasting the future or gazing into a crystal ball. There are no substantiated and accepted scientific or clinical techniques capable of such predictions. This would be like allowing the police to arrest someone because they, in their expertise, "thought" he was going to commit a crime at some time in the future. It is preposterous in light of the rights and safeguards provided for citizens of this country. They then added insult to injury and assert that Mr. Bellesfield was only "marginally cooperating in counseling and visitation." For him to cooperate with this charade would be like cooperating with the snake that bit him.

30. Such a scenario only buttresses the conspiracy which is perpetuated upon the unsuspecting parent who is confronted by therapists who demand that the parent admit to the alleged abuse and submit to their authority. If they do not, then they are said to be exhibiting denial, which enables DYFS and their appointed therapists to state that the parent is not cooperating. This is quite a Catch 22 for the parent who is innocent of the charges.

31. Further, the visitations at the DYFS appointed locations are put under a microscope in a very artificial, stiff and institutional atmosphere, making normal parent/child interactions difficult at best. This then enables the therapist's and DYFS worker's observations and evaluations of same to be critical of various aspects of the interaction, which are then used against the parent in Court. If the parent objects to the visitation site, or requests a different site or supervisor, then once again they [sic] "not cooperating." If the parent refuses to continue in this vicious cycle, then they are simply denied all contact with their child, which leads to termination procedures.

32. The true motives and clear indication of the effort to confirm their intentions are illustrated in their attempt to locate Mr. Bellesfield's sister, their real goal is clearly stated in the letter written by Sharon Arnold an investigator supervised by defendant Warren, as seen in exhibit I, annexed hereto, in which she states "In order for the child in question to be made available for adoption all efforts to locate existing relatives must be exhausted." It is submitted that this is nothing less than a smoking gun. Nothing more is needed to sustain the prima facie case that this was, in fact, their ultimate goal from the outset.

Obviously, before the child can be adopted the natural parents rights must be terminated. This was done prior to any finding of abuse and given the opportunity can be proven by strong documentary evidence from the defendants own records.

33. There are aggravating circumstances here. In light of the history and case law, regarding the protections accorded to parental and family rights throughout the history of this country, the defendants named herein, through use of the tactics described above have purposely and recklessly circumvented and violated state and federal law and long standing public policy and through fraudulent means, have willfully violated the petitioners rights to due process and equal protection under the fourteenth amendment to the United States Constitution. Here all of these were violated under color of State law by mid-level State officials who feel it is within their power to deny these rights, based solely on their opinion, without evidence of abuse or neglect or a judicial finding of same.

31. The deprivations here, which occurred under color of state law are egregious in the extreme. These actions were willful, wanton and committed with reckless disregard or are, in the alternative, grossly negligent and/or incompetent. As a direct and proximate result of these actions the petitioners have been wrongfully deprived of their most fundamental rights, have experienced extreme emotional, physical and financial distress, have had their good names impugned and suffered public humiliation and stigma and ostracism and have been damaged thereby.

Wherefore, the petitioners demand the immediate release of Eric Bellesfield from State Custody to his natural father and compensatory judgements against the defendants jointly and severally in an amount not less than $3,000,000.00 and such punitive damages as the Court deems appropriate, along with costs of this action.

Plaintiffs demand a trial by jury in this cause.

COUNT THREE

Conspiracy to violate civil rights, Denial of due process and equal protection, Abuse of power and discretion under color of State law, Ultra vires substantiation, Incompetence, Influence peddling, Defamation of character.

32. Plaintiffs reallege paragraphs 1-31 herein and incorporate same as if more fully set forth herein.

33. The plaintiff's now find themselves in State Court in a situation where their most fundamental rights continue to be violated and are without a remedy within the State system, as a result of the defendants abuse of power and process. In the instant case, these deprivations went on for almost two years, with no substantiated abuse, and without so much as a full hearing and/or a finding made by judicial Order. For the period of time prior to the 1995 Court Hearing before Judge Langlois, the petitioners were denied their due process rights, and their inalienable right to each other. Eric Bellesfield was wrongfully deprived of his liberty right and Michael Bellesfield was wrongfully denied his parental rights among others.

34. The rigorous application and importance of due process is extremely important in any case which involves a liberty interest or where Constitutional safeguards are threatened. The laws which have been implemented to serve as a means of enforcing the equal protection clause of the fourteenth amendment are not abstractions but are clear expressions of policy. These petitioners were not accorded due process or equal protection. This is confirmed by the record and is clearly violative of long standing judicial and public policy. Due process is required where there exists the possibility "grievous loss." One of the plaintiffs here has been deprived of his freedom and his father, the other has been deprived of his child, without so much as a trial, or even a full hearing.

35. Here we are concerned with the liberty interest of a minor as well as his father. There is no difference in the liberty interest of an individual whether he is a child or an adult. In this case neither the child nor the adult received due process and the actions which were violative of same led to an ultra vires substantiation of abuse. It should also be noted, that the reason Mr. Bellesfield lost his job was a result of faxes which DYFS sent to him at work several times, and which contained confidential medical information. Not only is this also a violation of Fourteenth amendment provisions of the right to privacy but is violative of the Americans With Disabilities Act 42 USC 12131 et seq. but the DYFS rule of confidentiality as well.

36. The burden of the State in order to intervene into the sanctity of the familial relationships is a heavy one, as it should be. A vast majority of states continue to recognize

the common law rule of "parental privilege." Twenty nine states have expressly incorporated this privilege by statute, including New Jersey, NJSA 2C:3-8, (1994). When considering what is reasonable in the circumstances courts have traditionally drawn a line somewhere between moderate spankings that leave no long-term or permanent marks and beatings where permanent injuries and scars are incurred. Yet in the instant case no bruises, marks or any other indication of abuse was ever found.

37. A recognition of the importance of limiting of State power over the family is provided in 42 USC Sec. 671(a)(15), which requires that, as a condition for receiving Federal funds to reimburse States for a portion of the cost for foster care, State agencies must make reasonable efforts to re-unite the child with the parent. Yet in the instant case, it would seem that every effort has been directed at doing exactly the opposite and their burden has not been met. NJSA 9:6-8.21c in pertinent part defines an "abused or neglected child" as;

> "A child whose physical, mental, or emotional condition has been impaired or is in imminent danger of becoming impaired . . . "

38. There can be no question here that the defendants violated these statute [sic], or in the alternative the statutes must be construed as unconstitutionally vague and overbroad. A full fact finding hearing was not even held until July of 1995. During that hearing there was testimony from several of the defendants named herein, virtually all of whom are affiliated in some manner with DYFS and it is submitted that they and the Deputy Attorney General, Peter Alvino, together with the law Guardian appointed for Eric, Joel Harris, also crossed the line

between cooperating and conspiring with respect to the preparation and "tailoring" of testimony in bad faith. Together they planned, coordinated effort to orchestrate such improper testimony, so as to convince the judge that the State should keep custody of Eric without good cause.

39. This testimony was based on "predictions" which have no basis in science, medicine, or psychology without any evidence of actual abuse. During the hearing virtually all of the defendants testified and/or took part in the proceedings as advocates. It is apparent from the record that defendants Alvino and Harris worked in concert to elicit the supposed "evidence," from the array of defendants named herein, all of whom despite no evidence of abuse, suggested their own predictions and perceptions should take precedence over same.

40. These included defendants Fiore and Shea, who improperly used their professional expertise to contribute to the ultra vires substantiation, with reckless disregard for the welfare and consequences to their patients. They followed no accepted or discernable clinical or scientific protocol in their report and evaluation, which was done in conjunction with DYFS worker Dave Johnston. They relied on second hand information, unconfirmed incidents, innuendo and leaps of faith which do not meet acceptable standards of treatment. They willfully engaged blurring the fundamental boundary which should exist between counselor and evaluator, as evidenced in the report of the Governor's Task Force On Child Abuse and Neglect, of which defendant Fiore was member, and which so states that such a boundary should be maintained.

41. As professionals, they had an obligation to act in their patients best interests, not to distort and skew their interpretations of test results and distorting their observations of behaviors. They quite clearly made statements about both petitioners which are not supported by any data or clinical or diagnostic tools and which constitutes not only unacceptable standards of care and treatment mal-practice, but are defamatory as well.

42. They further attempted to use two prior short term hospitalizations of Mr. Bellesfield, which he voluntarily gave them permission to obtain his records, to infer that he was an unfit parent. These were for acute depression, each, of which were just a matter of days in duration, and other than those days, as can be seen in the reports of the three doctors, infra, clearly did not impact on his ability to parent, and the use of these records for the purposes which the State used them in this manner would seem to be a clear violation of the Americans with Disabilities Act and significantly prejudiced Mr. Bellesfield.

43. Three separate experts, Dr. Goodman, Dr. Skinner, Dr. Chalemian wrote reports which not only disagreed with Fiore and Shea, but were severely critical of the manner in which DYFS and their contractors had handled this case. Each of their reports are annexed hereto as exhibits L, M and N respectively and are supported by Fiore's MMPI test results annexed hereto as exhibit O, which indicate that Mr. Bellesfield's personality was in the normal range.

44. The experts statements ranged from indicating that continued pressure on the child was unwarranted, to the fact that they were appalled and that the treatment the

Bellesfields received was reprehensible. Yet each of these experts would not, of their own volition, come to court to testify, not wanting to get involved with DYFS. This serves only to reinforce the perception of this agency as discussed, supra.

45. It is submitted herein, that both of the school systems named herein and DYFS treatment of Eric while in their custody, making derogatory statements about his father and attempts to brainwash Eric amounts to a form of institutional child abuse and meets the burden under NJSA 9:6-8.21. DYFS visited the schools on numerous occasions to "interview" Eric without his father's knowledge or consent. Further they encouraged the school counselors to continue these "looking for abuse" interviews. It was at the urging of DYFS the boy was strip searched and humiliated by a school counselor, which is a totally inappropriate and unacceptable practice. Eric's grades, his emotional, physical and psychological health have markedly deteriorated during the period he was in State custody.

46. The Randolph Schools did not destroy the false records related to Eric and his father as Ordered by the Office of Administrative Law. Mr. Bellesfield saw those records after the date they were supposed to be destroyed, and further discovered that these same records were forwarded to the Morris Knolls School system, who also kept them in defiance of the ALJ Order. They continued the interrogations of Eric at the urging of DYFS.

47. Despite the fact that each and every witness admitted that they had found no signs of abuse, and despite

the warning of manipulation as reflected in the DYFS notes, these defendants, working in concert offered biased, skewed and fraudulent evidence and interpretations which they supplanted for documented incidents of abuse. The evidence was not only cumulative, but distorted and in some cases outright falsifications. This specifically refers to perjured report and testimony of defendant Shea, that Mr. Bellesfield was hospitalized 3 days after Eric's placement. This is an outright lie as the hospital records show. This is grossly unprofessional, willful and malicious or in the alternative grossly incompetent.

48. The Judge's findings of fact, were issued August 22, 1995. In it she seems to have shifted the burden of proof to the petitioner citing a prior New j[sic]ersey case as precedent for doing so, when the cases are as different as night and day. n [sic] her findings she states that based on a preponderance of the evidence that Eric was abused within the meaning of the statute and therefore the burden should shift. It would seem that the judge construed the prior New Jersey case to stand for the proposition of burden shifting as a broad precedent and an exception to the fifth amendment privilege in cases of alleged abuse, when in fact, the decision in that case, which has been upheld on appeal, created only a limited exception, with specific predicates.

49. A Constitutional privilege, however, cannot be easily overcome. The petitioner must first show "injuries to the child which are substantial in nature . . . ," consistent with abuse. This includes broken bones, evidence of serious injury or neglect, or IMMINENT DANGER of same, according to the New Jersey statutes in question. In

this case, according to the DYFS records themselves, THERE WAS NO EVIDENCE OF ABUSE: Not only does it flow from this that therefore there could not have been a prima facie case made, but certainly if there was no abuse reported, it could not be substantiated. There is no established precedent to waive Constitutional rights and privileges upon the mere filing of a petition.

50. Nor does it mean that a parent can be deprived access to their child by the mere act of filing such a petition, which not only fails to establish a prima facie case, but one which is not supported by any EVIDENCE of abuse by admission of the agency itself. There must be SUBSTANTIAL EVIDENCE of injury. In the instant case it is not even disputed that there has never been any evidence of injury, despite Eric's report that his father struck him on January 8, 1994, which he later recanted.

51. No excessive force was used by Mr. Bellesfield, there was no injury, let alone substantial injury; only accusations, second hand statements and innuendo. Mr. Bellesfield did not testify himself during the hearing upon advice of Counsel and barely put on an affirmative defense for two reasons. First his attorney felt, rightfully so, that DYFS had not met its burden, secondly, he could not get those professionals who wrote reports to come and testify, because they were intimidated by DYFS, also rightfully so. Many professionals in this state who have done so, have ended up losing their licenses. Mr. Bellesfield's attorney did not want to Subpoena them, fearing that they would then be hostile. Indeed, the plaintiffs had difficulty finding an attorney who was willing to take on DYFS, as a result of the unbridled power and heavy handed tactics of this agency.

52. Additionally, as stated in the judge's finding, supra, the finding was made at the level of preponderance, and although this level of proof may normally be appropriate according to State law, with respect to State intervention. It is the petitioners contention, supported by the evidence, that this was more than State intervention and in cases which follow the escalation scenario described herein, the preponderance threshold is unconstitutional and should be re-examined. This was a clear effort to prevent access and ultimately to terminate parental rights.

53. The judge had access to the DYFS file which contained the letter regarding efforts at making Eric available for adoption. She knew that Mr. Bellesfield would no longer subject himself or Eric to visitation in a DYFS supervised environment and was aware of the progressive escalation of DYFS custody. At this very hearing the DYFS goal was changed from short term to long term placement. Indeed it would seem that DYFS and the DAG's who represent them seem to wield considerable power and have extraordinary access within the State Court system. This case is replete with many ex parte communications between the judge and DYFS or their agents.

54. The judge seemed particularly disturbed at a note which Mr. Bellesfield attempted to have Eric sign, while they were together in church, which stated that Eric wanted to return home. This fact is not in dispute. It was the act of loving parent, caught in this web of escalation, desperate to have his child back home. Nothing more, nothing less. Perhaps it was not the best of judgments, but it is hardly an appropriate basis for a finding of child

abuse. If the statute permits this kind of judgment and travesty to stand, then the statute is clearly so vague as to be unconstitutional.

55. It is submitted that as a result, the petitioners did not receive a fair hearing, were deprived of due process and that the Court erred both in shifting the burden and in the application of the preponderance standard. Since this Order has been in effect, Mr. Bellesfield has been virtually eradicated from the life of his child. On April 22, 1996, the findings were memorialized in an Order signed by a different judge, who had no prior knowledge of the case. The Order, however, permitted Mr. Bellesfield to submit to defendant Alvino an alternate visitation site. Mr. Bellesfield sent a certified letter to Alvino, suggesting that visits occur at the office of Dr. Richard Gardner, a highly respected expert in the field of child abuse, which was delivered on February 18, and which requested a reply within ten days of receipt, Defendant Alvino did not even bother to respond. This has also occurred on other occasions in the past.

56. On February 6, 1997 the Child Placement Review Board made recommendations to the Judge. They have accepted the new DYFS goal for Eric, which has now become "self sufficiency and preparation for college." After keeping Eric from his father for over two years, clearly they now intend to keep Eric until his emancipation, thus effectively terminating this father's access to his son, during his last years of adolescence.

57. Additionally, Ms. Warren admitted to forging the DYFS Supervisor's signature to that form, to Mr. Bellesfield, when he confronted her with the fact that the

DYFS Supervisor was not even at the meeting. All of this is simply more evidence of the escalation process and termination is termination no matter what it is called and it is clear that termination has effectively already occurred.

58. Just prior to March 1, 1997, as this Complaint was being readied for filing, three important documents were received by Mr. Bellesfield, which transformed all of the allegations in this petition into fact, and shows quite clearly that the scenarios alleged herein were all a build up to an attempt to terminate Mr. Bellesfield. The first is a recent letter he received from Eric, compared with his prior letters. One must question what could cause such a shift in such a short period of time. This is, by itself, ample illustration that Eric is being programed [sic], in that he now echoes and endorses, virtually every statement of DYFS. Such a radical change must be seriously questioned, especially when other behavioral indicators and Eric's badly declining academic performance continue to deteriorate during the same period of time.

59. It is clear from the recent letter, that not only are these written in age inappropriate language, but many are age inappropriate issues and ideas, a child Eric's age would not normally be interested or engaged with. They are clearly the urging of the DYFS personnel and "therapists" using a common technique of brainwashing in urging the child to "get his feelings out in writing to his father.

60. It is no coincidence that almost simultaneously, Mr. Bellesfield received the documents annexed hereto as exhibits V and W. The first is the letter from DYFS dated

February 26, 1997 and his response to same. The second is the Summary Hearing Notice from DYFS and submitted by defendant Warren, indicating the submission of review board findings, and requesting a hearing in Morris County Superior Court, to recommend the initiation of termination proceedings, once again before another judge!

61. This would seem to be a response to Mr. Bellesfield's letter to request visitation and information regarding Eric. The letter he received in return states unequivocally that Eric is not attending church. No other information or visitation was discussed. Obviously this so because they were aware of the Notice in exhibit W was being prepared, to begin the final step of the escalation described herein, namely the termination of parental rights, despite the fact that there is still no evidence of abuse.

62. On this issue the Supreme Court has clearly spoken, recently and unequivocally. In *Santosky v. Kramer*, 455 US 745 (1982) the court clearly stated:

> " . . . freedom of personal choice in matters of family life is a fundamental liberty interest protected by the fourteenth amendment . . . there must be conclusive evidence beyond a reasonable doubt (not merely a preponderance of evidence) to terminate a parent's right of access to their child."

63. Just this past December of 1996, Justice Ruth Bader Ginsberg wrote:

"We place decrees forever terminating parental rights in the category of cases in which the state may not bolt the door to equal justice . . . Parental termination decrees

are among the most severe forms of state action . . . The Mississippi woman seeking to appeal is endeavoring to defend against the state's destruction of her family bonds, and to resist the brand associated with a parental unfitness adjudication (cite omitted)."

It is clear that the defendants here acted in total and willful disregard for same.

64. Clearly such a right deserves due process. Yet this father and son have been forcibly and fraudulently separated, deprived of each other for over three years without so much as a full and fair hearing. That is all this father and son are requesting on a good faith basis, and to which they are entitled. It is for these reasons that the current petition was filed in this Court.

65. In the face of the long term pattern of harassment, the flagrant abuse of power and process and clear evidence of bad faith and fraud, the plaintiffs must be accorded at least a hearing in their choice of a Federal Forum, to vindicate their Constitutional rights, especially when, the State statute is being properly attacked on its face, and no other avenue to enforce those safeguards is available. The State is not prejudiced by such a review, but the alternative if such is not granted, will be the wrongful termination of a parents right to his natural child. The statutes under 42 USC 1983 are designed as exactly such a mechanism, under these circumstances to vindicate those rights. The principle of abstention cannot simply be used to give State Courts the first opportunity to vindicate a Federal claim of such gravity and in the face of such gross violations on the part of the State. It is

the function of the Federal Court to provide such access and oversight.

66. As a direct and proximate result of the actions of these defendants, the petitioners, have been unlawfully deprived of each others affection, they have suffered public humiliation and ridicule and their good names have been impugned and have been subjected to extreme emotional, physical and financial problems which are now overwhelming and have been damaged thereby.

WHEREFORE, the petitioners demand the immediate release of Eric Bellesfield from State Custody to his natural father and compensatory judgments against the defendants jointly and severally in an amount not less than 3,000,000.00 and such punitive damages as the Court deems appropriate, along with costs of this action.

Plaintiffs demand a trial by jury on this cause.

WHEREBY, plaintiffs seek an expedited hearing before this Court, for declaratory and injunctive relief from these acts, the issuance of a temporary injunction to prevent the State from going ahead with the termination proceedings pending such a hearing in this Court on the Constitutionality of same. Considering the bad faith enumerated herein, and the immediate and irreparable damage to the plaintiffs if such a proceeding were permitted to go fourth [sic] and therefore meets the requisite criteria for such intervention on the part of the Federal Court. Petitioners also request the issuance of a permanent injunction to stop the current and prevent future trespasses by the defendants, except as provided for by proper construction of State law and without further

violation of petitioners Constitutional rights and safeguards to which they are entitled. The acts of the defendants are continuing, and petitioners have no other legal remedy to prevent further trespass. This Court must act immediately to put a stop to the illegal intrusion into this family and the severance of the father/son relationship. The acts of the Defendants are so egregious and committed with such willful disregard for law and public policy that such extraordinary relief is justified.

Should the defendants assert a defense of statutory, sovereign or qualified immunity declare that such statues are inapplicable herein due to the level of bad faith shown. State officials cannot use a shield of qualified immunity in this or any other case, unless they are acting in good faith, and not convoluting and circumventing the law and public policy in bad faith. In the event the defendants assert a defense of abstention, collateral estoppel, comity, entire controversy or res judicata, declare same inapplicable herein or in the alternative unconstitutional and violative of petitioners due process, both the procedural and substantive.

WHEREFORE, the undersigned Pro Se Plaintiff, pursuant to Federal Rules of Civil Procedure 65(a), respectfully moves for an expedited hearing before this Court for the granting the injunctive and declaratory relief requested herein; that the State of New Jersey be required to produce the person of Eric Bellesfield, now in State custody before this Court; that in addition to the other relief that the State of New Jersey be required to bear the costs of any counseling or "deprogramming" deemed necessary by experts appointed by the Court and that all records related to this matter from any and all State

agencies be extracted, sealed and expunged; and that the State be required to bear the cost of any educational remedial instruction or tutoring, and grant Plaintiffs attorney fees and costs incurred in this action, pursuant to Federal Rules of Civil Procedure 54(d).

JURY DEMAND

Plaintiffs hereby demand a trial by jury in this cause, as to all such issues herein, which are so triable.

/s/ Michael Bellesfield — 3/25/97
Michael Bellesfield, ex-rel — Date
Eric Bellesfield, Petitioners